

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

HIDDEN HILLS MANAGEMENT,
LLC, and 334th PLACE 2001,
LLC,

Plaintiffs,

v.

AMTAX HOLDINGS 114, LLC, and
AMTAX HOLDINGS 169, LLC,

Defendants.

3:17-cv-06048-RBL

TACOMA, WASHINGTON

June 4, 2019

9:30 a.m.

Bench Trial

AMTAX HOLDINGS 114, LLC,
AMTAX HOLDINGS 169, and
PARKWAY APARTMENTS, LP,

Counter-Plaintiffs,

v.

HIDDEN HILLS MANAGEMENT,
LLC, and 334th PLACE 2001,
LLC,

Counter-Defendants.

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcript
produced with computer-aided technology

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1 THE COURT: Good morning. Anything before we begin?

2 MS. LATSINOVA: I don't think so.

3 THE COURT: Ms. Latsinova, please proceed.

4 CATHERINE TAMARO

5 Having previously been sworn, testified further as follows:

6 DIRECT EXAMINATION (Cont.)

7 BY MS. LATSINOVA:

8 Q Good morning, Catherine.

9 A Good morning.

10 Q You talked yesterday about your option exercised in Hidden
11 Hills. Did you also exercise your option in Parkway, under
12 Section 7.4J under the Parkway LPA?

13 A Yes, I have.

14 Q When did that happen?

15 A I believe it was the third day of January 2018.

16 Q At that point, the compliance period was over?

17 A Yes. It had ended on the last day of 2017.

18 Q And all the tax credits and losses had been delivered to
19 AMTAX?

20 A Yes, they had.

21 Q And so let's look at Exhibit 128, Adam, please.

22 Do you recognize Exhibit 128?

23 A Yes.

24 Q What is it?

25 A This is the letter that I sent to AMTAX 169 exercising my

1 option to purchase their interest in the partnership, the
2 Parkway Partnership.

3 Q Did you also provide an appraisal as required by 7.4J of
4 the Parkway LPA?

5 A I indicated that I had selected an appraiser and
6 anticipated that the result would be completed at the end of
7 January.

8 Q Let's go to 129, please, Adam.

9 Do you recognize Exhibit 129?

10 A Yes, I do.

11 Q Is this the CBRE appraisal that you provided to AMTAX?

12 A Yes, it appears to be.

13 Q Do you recall what the appraisal value was that CBRE
14 arrived at?

15 A Not precisely.

16 Q Okay. Now, did AMTAX respond?

17 A No.

18 Q What did you do?

19 A I waited. And in February, I wrote another letter to
20 AMTAX.

21 Q Let's go to 131. Is Exhibit 131 another letter you wrote?

22 A Yes, it is.

23 Q And what are you saying in there?

24 A I'm pointing out that I have -- that the general partner
25 has exercised its option under 7.4J, and that the appraisal

1 was completed, and I had it, that all the year-end documents
2 had been submitted to AMTAX, and that I had not received any
3 acknowledgment of my previous letter.

4 Q Okay. So what are you asking AMTAX to do?

5 A I asked them to inform me of the date when they
6 anticipated receiving their completed appraisal.

7 Q Did you get an appraisal?

8 A From AMTAX, I did not.

9 Q Okay. Did you get anything from AMTAX?

10 A I believe I got a letter after this one.

11 Q Okay. All right.

12 A After my letter.

13 Q Let's go to 132, please.

14 Is this a letter you got?

15 A Yes, it is.

16 Q And what does it say, in summary?

17 A Well, they asked to see the appraisal. And they said they
18 were evaluating questionable activity by the general partner
19 at Parkway, including failure to maximize rental income, and
20 other things.

21 Q Now, did you respond to the letter that we see here as
22 Exhibit 132?

23 A Yes, I did.

24 Q And let's go to 133, please, Adam.

25 Is your response in Exhibit 133?

1 A Yes. This is my response.

2 Q And what are you saying in that response to AMTAX?

3 A I reminded them that -- well, in this letter, I had
4 forwarded a copy of the CBRE appraisal. I pointed out that
5 Parkway had been managed professionally, and with great care,
6 by my affiliated management company. The property was
7 positioned appropriately in the rental market. It is
8 providing decent, safe and sanitary housing to low-income
9 residents, which it is supposed to be doing.

10 I noted that this was the first time that they had raised
11 these complaints, that the property had been managed
12 appropriately financially, and if they had any questions they
13 were free to contact me or to inspect the records, which I
14 keep at my office.

15 Q Did they -- did AMTAX take you up on that offer?

16 A No, they did not.

17 Q What did they do?

18 A I don't believe they did anything.

19 Q Let's look at Exhibit 135, Adam.

20 Do you recall receiving this letter from AMTAX?

21 A Yes, I do.

22 Q And what's the date of the letter?

23 A This is dated May 8th.

24 Q So it's now May 8th and you still don't have an appraisal
25 from them; is that correct?

1 A Correct.

2 Q What does the letter say?

3 A It says, let's see, as a threshold matter the breadth,
4 complexity and opacity of my misconduct have made it
5 difficult and time consuming to uncover. And they had
6 identified what they considered to be a number of breaches of
7 the general partner's obligation under the partnership
8 agreement. And they went on to list what they believed those
9 breaches would be.

10 Q And as you sit here today, have you received a second
11 appraisal of the Parkway property from AMTAX?

12 A In accordance with the partnership agreement, no, I have
13 not.

14 Q Did you receive any appraisal from AMTAX?

15 A AMTAX's counsel indicated that it had commissioned an
16 appraisal of the property for legal advice to AMTAX. But to
17 my knowledge, AMTAX itself has not appraised this property in
18 accordance with their obligation.

19 Q Let's look at Exhibit 136, Adam.

20 What is Exhibit 136?

21 A This is an appraisal of Parkway Apartments that was
22 commissioned by AMTAX's counsel.

23 Q Do you recall receiving this from AMTAX, or how did you --
24 when did you first see it?

25 A I believe I received this -- I believe 334th received it

1 through its own counsel.

2 Q In the context of this litigation?

3 A Correct.

4 Q In discovery, if you know?

5 A I do not recall.

6 Q Okay. Now, Parkway was added to the Hidden Hills' dispute
7 later; is that correct?

8 A Yes.

9 Q And can you explain, in your own words, why did you choose
10 to seek to add Parkway to the Hidden Hills' dispute?

11 A Parkway -- I sought to add Parkway in order to complete
12 the buyout process for Parkway Apartments under the
13 provisions of the partnership agreement.

14 Q Now, do you understand that in this litigation, AMTAX is
15 challenging some of the fees that were reflected in the
16 audited financial statements?

17 A Yes, I do.

18 Q Now, I want to ask you some questions about some of these
19 specific fees. Now, are you aware that AMTAX is challenging
20 advances that you made to the partnership to pay the managing
21 general partner fee?

22 A I am, yes.

23 Q And who is the general managing partner?

24 A The managing general partner is actually Hearthstone
25 Housing Foundation, who is our nonprofit partner.

1 Q When did Hearthstone come into the partnership?

2 A I recruited Hearthstone to the partnership in 2005. And I
3 gave them half of my general partnership share, which is how
4 they ended up as the managing general partner. And then
5 334th became the administrative general partner.

6 Q Did the LPA have to be, and all the governing documents,
7 have to be amended to allow for that change?

8 A Yes. All of the partners signed an amendment admitting
9 Hearthstone as the managing general partner.

10 Q And so can you please explain what Hearthstone is and what
11 it does?

12 A Hearthstone Housing is a nonprofit organization who
13 provides services to the partnership -- services to the
14 residents, as well as being responsible for applying for our
15 property tax exemption.

16 Q Okay. And what services to the residents does it provide?

17 A As an example, one thing they do is they provide school
18 backpacks and school supplies to all the children living in
19 the complex every year, over the summer, so those children
20 are prepared for school.

21 Q And so is Hearthstone compensated for its services?

22 A Yes. Hearthstone -- yes, we agreed to pay Hearthstone an
23 annual fee.

24 Q What is that fee?

25 A It's a little bit less than \$10,000 per year.

1 Q And so you mentioned that Hearthstone provides a tax
2 savings to the partnership?

3 A Yes. Hearthstone files the annual application to the
4 Washington Department of Revenue for our property tax
5 exemption.

6 Q So did Hearthstone deliver the tax savings that it can
7 provide?

8 A Yes. They have done that for us every year.

9 Q And so you mentioned they're paid \$10,000 a year. And
10 what are the tax savings they bring, annually?

11 A Oh, right now approximately \$180,000 a year on property
12 tax savings.

13 Q And so where does -- what happens when the cash flow of
14 the partnership is insufficient to pay Hearthstone its fee?

15 A The way we drew up that amendment had to do with -- had to
16 do with tax law. I can remember that. So Hearthstone's fee
17 is supposed to be paid only after the property pays all its
18 other obligations, including its obligations to the general
19 partner. And it didn't have that kind of money. So every
20 year, I advanced funds to Parkway to make sure that
21 Hearthstone's fee was paid timely.

22 Q Okay. And were these advances reflected in the financial
23 statements?

24 A Yes, they were. Every year.

25 Q And so if there is cash flow, Hearthstone is paid out of

1 cash flow. If there is no cash flow, you advance the fee.
2 Are you aware that there's some third way to deal with
3 Hearthstone?

4 A I am not.

5 Q Okay. And do you recall Mr. Krabbenschmidt's deposition
6 testimony where he suggested there's a third way?

7 A Well, he suggested that we shouldn't have been paying
8 Hearthstone, and that Hearthstone would just continue to
9 provide its services for no fee.

10 Q Okay. And are you aware of any nonprofit managing general
11 partner that provides its services, such as Hearthstone
12 provided here, for free?

13 A I am not.

14 Q Okay. Now, do you think that Parkway Partnership would be
15 better off if Hearthstone's fee was not paid?

16 A Parkway would clearly not be better off if Hearthstone
17 stopped applying for the property tax exemption.

18 Q In the years when you advanced Hearthstone's fee because
19 cash flow was insufficient, can you calculate the total tax
20 savings to the partnership that it's received?

21 A Since the time that Hearthstone entered Parkway Apartments
22 LP, through the end of the compliance period, the savings to
23 the partnership were about \$1.6 million.

24 Q Okay. And do you understand that AMTAX is seeking the
25 amount of your advances to Hearthstone, for Hearthstone's

1 fees, as damages in this case?

2 A Yes, I am.

3 Q Okay. Now, another item I want to ask you about, another
4 fee that they're challenging. Are you aware they're
5 challenging the legal services, the cost of legal services to
6 the partnership?

7 A I am.

8 Q Yes. And so who provided legal services, first of all?

9 A My husband, Steven Arterberry, provided occasional
10 services to Parkway Apartments.

11 Q You testified yesterday that your husband is a licensed
12 engineer. Is he also a lawyer?

13 A Yes. He's a member in good standing of the Washington
14 Bar.

15 Q Was he an engineer first or a lawyer first?

16 A He was an engineer first.

17 Q Now, and why did Parkway need legal services?

18 A Small matters come up, kind of on a regular basis. So my
19 husband has -- for example, tenants will file suit against us
20 in small claims court. And my husband has represented
21 Parkway in small claims court. My husband has worked with
22 certain state agencies that come into the property, for
23 example, Department of Labor and Industries will do
24 inspections. And he is the contact with Labor and
25 Industries.

1 My husband spent a lot of time, one year, working with the
2 homeowner's association next door, because we discovered we
3 had a very active drug house, and a lot of the customers were
4 coming over to Parkway and looking for things to steal. And
5 my husband spent a lot of time with that HOA and Federal Way
6 Police to get that drug house shut down. So those are the
7 kinds of services he provides to Parkway.

8 Q And did he bill, did your husband bill Parkway for the
9 legal services he provided?

10 A He did.

11 Q What kind of fees did he charge?

12 A His fees are reasonable.

13 Q Were they reflected in the audited financial statements?

14 A Yes.

15 Q Did AMTAX complain about these fees, prior to this
16 litigation?

17 A They did not.

18 Q Now, very quickly, about the -- I want to touch on the
19 repair supervision fee. We talked about this yesterday. I
20 have just a few more questions.

21 So are you aware that AMTAX is challenging repair
22 supervision fees charged by Trieste Holdings?

23 A Yes, I am.

24 Q And so Trieste Holdings has a general contractor's
25 license?

1 A Yes, it does. Since 2011, it has had a general
2 contractor's license.

3 Q Okay. And does Trieste Holdings supervise construction?

4 A Yes. We have acted as general contractor for the repairs
5 we have been discussing at the property.

6 Q Does that include the roofing?

7 A That did include the roofing, yes.

8 Q Did it include the siding?

9 A Yes.

10 Q Did it include the balconies?

11 A Yes, it did.

12 Q Did it include the paving?

13 A Yes, it did.

14 Q So did Trieste get permits for the work when permits were
15 required?

16 A We had to obtain permits for the balconies. And we
17 obtained permits for the swimming pool demolition.

18 Q Did you hire architects?

19 A We did, for the balconies, yes.

20 Q Let's look at Exhibit 171.

21 MS. LATSINOVA: Your Honor, 171 has not been admitted
22 yet. It has been exchanged. So we need to lay some
23 foundation here.

24 Q Catherine, what is exhibit -- what is the document you see
25 on the screen here?

1 A This is the cover sheet from our architect, James Castino,
2 who submitted the architect drawings for the new balconies to
3 the City of Federal Way.

4 Q That was commissioned by Trieste Holdings?

5 A Yes.

6 MS. LATSINOVA: We move to admit 171.

7 A It was -- to be accurate, it was commissioned by Parkway
8 Apartments LP.

9 THE COURT: Any objection?

10 MR. PETTIT: No, Your Honor.

11 THE COURT: Exhibit 171 is admitted.

12 (Exhibit 171 was admitted.)

13 Q And so are you aware of anything in the Parkway LPA that
14 requires Trieste Holdings to perform general-contractor type
15 work for free?

16 A No, I am not.

17 Q And did Trieste Holdings charge fees for the general
18 contractor work that general contractors normally would not
19 charge?

20 A No.

21 Q Did Trieste Holdings charge more than a general contractor
22 would charge, in your experience?

23 A I don't believe so.

24 Q Now, okay, so I want to ask you about the employee rent
25 subsidy. Are you aware that AMTAX is challenging a subsidy

1 that some of the employees received in Parkway?

2 A Yes, I am.

3 Q And what's the -- what's that subsidy and who received it?

4 A For employees who live on site, I give them a rent credit
5 equal to a one-bedroom unit, because it's important to have
6 employees available in the case of emergencies at nights and
7 on weekends.

8 So we've had -- the number fluctuates, but we usually, we
9 almost always have several employees living on site. And a
10 situation came up, I had -- an affiliate of mine had
11 purchased several small dwellings right next door to Parkway.
12 I actually picked them up in the foreclosure years. And
13 several of the employees moved over next door. And it was
14 for reasons of family size, because Parkway has one and two
15 bedroom units, and they had larger families, so they moved
16 over next door. They were still available.

17 What I did is when they were living in the unit, Parkway
18 did not receive full rent. When they moved out of the unit,
19 Parkway rented to someone and got full rent. And that rent
20 credit was paid to the unit next door, which was owned by my
21 affiliate. The employees paid the balance. If they want to
22 live in a two-bedroom unit or if they want to move next door
23 to these larger -- they're duplexes -- they have to pay the
24 difference. Those employees were willing to pay more. There
25 was no net financial difference to Parkway. Parkway either

1 rented a unit for less than full price to an employee, or it
2 paid that amount to my affiliate and received full rent from
3 a new tenant.

4 Q What's your understanding, what would these individuals
5 that you're describing have done if they didn't receive the
6 subsidy? Would they have stayed in the unit?

7 A They would have continued living in their -- we had a
8 situation with multiple children living in that unit. It was
9 better for them, but they would have remained in Parkway at
10 the discounted rent, because it was a discount.

11 Q Okay. Now, another item. Are you aware that AMTAX is
12 challenging interest accrued on the deferred developer fee as
13 damages in this case?

14 A I am.

15 Q Yes. And so is there an issue about -- how -- when is
16 interest due? How is it calculated?

17 A The partnership agreement says that interest is accrued on
18 the deferred developer fee until ten years after the first
19 building has been placed in service.

20 Q Okay. So if the buildings were placed in service in 2002,
21 then how was the interest calculated?

22 A Then interest would stop in 2012. If the buildings -- the
23 way we ended up with the calculation is that the interest was
24 stopped ten years after June 30, 2003, which is the date on
25 record with the Washington State Housing Finance Commission

1 for the first placed in service.

2 Q And so would that information be found somewhere on the
3 Washington Housing Commission's website?

4 A Yeah, on their website, they have an easily available --
5 they have a whole big list of every property that they're
6 overseeing with the first-placed-in-service date for the
7 building.

8 Q So do you understand Mr. Krabbenschmidt's position to be
9 that the buildings were placed in service in 2002 as opposed
10 to 2003?

11 A I understand that, yes.

12 Q And the difference between his position and yours is a
13 year of interest?

14 A A year of interest, yes.

15 Q Okay. Well, let's go to the source.

16 170, please.

17 MS. LATSINOVA: And, again, Your Honor, this has not
18 been admitted. So I need to ask some foundation questions.

19 Q What is Exhibit 170?

20 A This is the first page of the list that can be found on
21 the Washington State Housing Commission's website.

22 MS. LATSINOVA: Move to admit 170, please.

23 THE COURT: Any objection?

24 MR. PETTIT: No, Your Honor.

25 THE COURT: Exhibit 173 is admitted.

1 MS. LATSINOVA: It's 170.

2 THE COURT: 170?

3 MS. LATSINOVA: Yes.

4 THE COURT: I'm sorry, 170.

5 (Exhibit 170 admitted.)

6 Q So, can you find Parkway Apartments there?

7 A Yes.

8 Q So what does it say about when it was placed in service?

9 A The first building was placed in service, according to the
10 Washington State Housing Finance Commission, on June 30,
11 2003.

12 Q Now, that's all the questions I have for you today about
13 these specific damage items.

14 Now, in conclusion, have you provided AMTAX with a
15 waterfall calculation for Parkway?

16 A For Parkway?

17 Q For Parkway.

18 A Yes, I have.

19 Q Let's go to Exhibit 168, please.

20 MS. LATSINOVA: This is another exhibit that has not
21 been admitted, Your Honor.

22 Q So, Catherine, what is Exhibit 168?

23 A This is the waterfall calculation under Section 6.2 of
24 Parkway's partnership agreement, showing the formula by which
25 we arrive at a buyout price.

1 MS. LATSINOVA: We move to admit 168.

2 THE COURT: Any objection?

3 MR. PETTIT: No, Your Honor.

4 THE COURT: Exhibit 168 is admitted.

5 (Exhibit 168 was admitted.)

6 Q Please explain how you put together this waterfall.

7 A Okay. Again, this is our modeling of a hypothetical sale.
8 So we start with our appraised value right there, and add in
9 any money in the bank accounts. Kind of keep going through
10 that and take off 3 percent of the appraisal price to model
11 our cost of sale. And we have capital proceeds right there
12 of \$16,745,000. Then we subtract all of the accounts payable
13 at the property. We subtract the HUD mortgage. We subtract
14 the interest paid in arrears. And then we -- the next number
15 actually is current liabilities, which is -- those are the
16 old payroll and management fees that are still owed to me.

17 We subtract the remainder of the deferred developer fee
18 right here, we subtract interest on the deferred developer
19 fee, and we subtract my subordinated loans, to get down to
20 \$4.9 million of profits. Then we start doing our splits,
21 according to the partnership agreement, and end up at the
22 \$2.373 million.

23 Q Okay. And so this is based on the CBRE appraisal?

24 A Correct.

25 Q That's the only appraisal that's been done in this case?

1 A Yes.

2 Q And now the 904 and 289, this is the DDF and the interest
3 on DDF; is that correct?

4 A Yes, that is correct.

5 Q And so let's flip, hopefully, to Exhibit 3, Section 6.2B.

6 This is the waterfall in Section 6.2B of the Parkway
7 LPA. So I just want you to show us exactly where the DDF is
8 required to be repaid, in what priority?

9 A It's repaid -- well, number five, it's the fifth payment
10 we subtract in our hypothetical sale.

11 Q The waterfall requires the DDF to be paid in fifth
12 priority?

13 A Yes.

14 Q What about interest on DDF?

15 A Well, I added in the interest, because it isn't
16 specifically called out in this waterfall.

17 Q Okay. Let's go back to your waterfall, which was 168.

18 Now, you highlighted this before. Line 27,
19 administrative general partner subordinated loans,
20 \$1.5 million?

21 A Yes. Yeah, those were direct advances I made to the
22 partnership.

23 Q These have been on the audited financial statements every
24 year?

25 A Yes.

1 Q And let's flip back to the waterfall, Adam. Okay. 6.2B,
2 back to the waterfall. Okay.

3 Can you please point us to the priority that requires
4 repayment of your subordinated loans?

5 A That would be the sixth.

6 Q So right after the DDF?

7 A Yes, correct.

8 Q And so now, one last question. Does that general partner
9 have an obligation to deliver the credits to the limited
10 partner?

11 A In this partnership agreement, yes, the general partner
12 has guaranteed the tax credits, which is probably the main
13 reason why I was advancing funds to this partnership so
14 regularly.

15 MS. LATSINOVA: Thank you. That's all the questions
16 I have.

17 THE COURT: Mr. Pettit?

18 MR. PETTIT: Thank you, Your Honor. If you can give
19 me 30 seconds to get myself situated.

20 THE COURT: Certainly.

21 MR. PETTIT: Thank you.

22 CROSS EXAMINATION

23 BY MR. PETTIT:

24 Q I believe there's a set of our trial exhibits as well,
25 Ms. Tamaro. Can you confirm there are binders that have

1 exhibits that have an "A" prefix there? I want to make sure
2 you have our exhibits.

3 A Where am I looking? I see Volume 1, 2, 3 and 4.

4 THE CLERK: Do you need all of them all at once?

5 Q We're going to be showing exhibits on the screen. If you
6 ever want to look at the paper copy and check pages I'm not
7 showing you on screen, just let me know and we'll bring you a
8 paper copy so you can look at it. I want you to have the
9 ability, when I'm talking about an exhibit, if there's any
10 page you want to see, we can also bring it up on the screen
11 too. So if there's any point that you want to look at the
12 full paper copy of the document, let me know, and we'll make
13 sure you have it in front of you.

14 A Okay.

15 Q Good morning, Ms. Tamaro. Do you recall providing a
16 declaration in support of a request for temporary restraining
17 order and preliminary injunction that you filed in December
18 of 2017, before this case was removed to federal court?

19 A No.

20 Q You don't recall that?

21 A No.

22 Q Okay. I've got hard copies of that declaration here, and
23 I'm also going to put it up on the screen, just so you can
24 take a look at it and confirm that this is, in fact, a
25 declaration that you submitted in connection with --

1 MR. PETTIT: And I have a copy for counsel. Your
2 Honor, may I approach?

3 THE COURT: You may. You may.

4 Q So, Ms. Tamaro, take a minute to look at that and confirm
5 that this was a declaration that you submitted in this
6 action.

7 A That is my signature, yes.

8 Q Okay. And this is dated December 5, 2017; is that right?

9 A Yes.

10 Q Okay. And you submitted this under penalty of perjury; is
11 that right?

12 A Yes.

13 Q Okay. And do you also recall verifying discovery
14 responses on behalf of the general partners, Hidden Hills and
15 334th Place? Let me bring them up; maybe that will help
16 refresh your recollection.

17 Let's bring up Exhibit A-239 on the screen. And if you
18 go to page -- those are the responses, you'll see on the
19 first page, from Hidden Hills Management. Do you see that
20 "Hidden Hills Management hereby responds to AMTAX as
21 follows." Do you see that?

22 A Yes.

23 Q Then if you go to page 12 of that exhibit, do you see
24 there's a verification there signed by you from January of
25 2018?

1 A Yes.

2 Q And so you -- does this refresh your recollection that you
3 verified discovery responses in this action?

4 A Yes.

5 Q And let's bring up Exhibit A-263. Now, those are the
6 interrogatory responses from 334th Place in connection with
7 the Parkway portion of this action. Do you see that?

8 A Yes.

9 Q And if we go to page 14 of Exhibit A-263, you'll see
10 there's a verification there as well, that it appears that
11 you signed in October of 2018. Do you see that?

12 A I do.

13 Q Okay. And so does this confirm, to your satisfaction,
14 that you provided discovery responses under penalty of
15 perjury in this action?

16 A Yes.

17 Q And in addition to providing a declaration and discovery
18 responses, you were deposed in this case over the course of
19 three days, not only in your individual capacity, but also as
20 a representative of the general partners; is that correct?

21 A Yes.

22 Q And you understood at the time of your deposition and your
23 discovery responses that those statements that you made in
24 those settings were all under penalty of perjury. You
25 understood that?

1 A Yes.

2 Q Given that you've already spoken under oath about this
3 case multiple times, there may be occasions during the course
4 of this examination where I refer back to your prior
5 testimony to help refresh your recollection or to clarify
6 something. Okay?

7 A All right.

8 Q You testified during your direct examination that you have
9 a bachelor's degrees from Stanford in both economics and
10 mechanical engineering; is that right?

11 A Yes.

12 Q Did you pursue those degrees jointly or in succession?

13 A I received them at the same time.

14 Q And I think you also said that you received a master's of
15 science from the University of Washington in 2016; is that
16 right?

17 A Yes.

18 Q And was that -- when did you receive your degrees from
19 Stanford?

20 A In 1984.

21 Q Okay. And during the time in between you getting your
22 degrees from Stanford and your master's at the University of
23 Washington, you worked for a number of years in investment
24 banking; is that right?

25 A Yes, I did.

1 Q And you also got involved in real estate development, I
2 believe you said, in 1996 or thereabouts?

3 A Yes.

4 Q And just closing out on your educational background, your
5 concentration for your master's was environmental toxicology;
6 is that right?

7 A Yes.

8 Q I just have to ask, because of the timing, was your
9 pursuit of a master's in environmental toxicology in 2016 in
10 any way motivated by your focus on the environmental
11 condition of the Hidden Hills property?

12 A No.

13 Q Have you ever taught at the university level?

14 A I have not.

15 Q Now, going back to your investment banking career. Can
16 you just very briefly describe what you did in investment
17 banking?

18 A I worked with municipal bond underwriting.

19 Q Did you work for a firm?

20 A Yes.

21 Q What firm did you work for?

22 A The first firm I worked for was called Seattle Northwest
23 Securities. And the second firm was called Edward Jones.

24 Q And that was -- you did that until approximately 1999 or
25 2000; is that right?

1 A Yes.

2 Q But in or around 1996, you also became involved in real
3 estate development; is that right?

4 A Yes.

5 Q And your experience in real estate development has been
6 focused on LITHC developments, right?

7 A Yes.

8 Q Do you have any experience, out of the LITHC context, with
9 real estate development?

10 A Real estate development? The properties I have developed
11 have all been LITHC properties.

12 Q Okay. And you currently manage the general partner
13 interests in nine LITHC partnerships in the State of
14 Washington, including Hidden Hills and Parkway; is that
15 right?

16 A Yes.

17 Q You also have a property management company called Trieste
18 Holdings; is that correct?

19 A Yes.

20 Q That's co-owned by you and your husband, Steven
21 Arterberry?

22 A Yes.

23 Q How long has Trieste been in existence?

24 A To be honest, I'd have to look it up.

25 Q Okay. Am I pronouncing it correctly, Trieste?

1 A Yes.

2 Q I'd like to now turn to the two partnerships in dispute,
3 Hidden Hills and Parkway.

4 You testified on direct examination that you were
5 directly involved in the negotiation surrounding the
6 formation of both of those partnerships; is that right?

7 A Yes.

8 Q And so if there was some term in either the partnership
9 agreement or any other partnership document that you did not
10 agree with, you had an opportunity at the time to say
11 something during the negotiation process; is that right?

12 A Presumably, yes.

13 Q And you noted, in your direct examination, that entities
14 responsible for managing AMTAX's interests in Hidden Hills
15 and Parkway have changed over time, but the AMTAX entities
16 have been the limited partners in these partnerships since
17 their inception; is that correct?

18 A Yes.

19 Q And AMTAX provided the capital to fund the redevelopment
20 of these two properties; is that right?

21 A Yes.

22 Q Would you agree with me that private capital investment is
23 necessary for a LITHC partnership to be viable?

24 A That's a broad statement. But these two partnerships did
25 need that much money, yes, that came in from the limited

1 partner.

2 Q Of the nine partnerships, LITHC partnerships where you've
3 served as the general partner, have any of them not involved
4 private investment of capital?

5 A No.

6 Q So all nine have involved private investment?

7 A Correct.

8 Q Do you recall testifying on direct examination that tax
9 credits and losses are the primary reasons why limited
10 partners invest in LITHC?

11 A Do I recall? I don't recall. But if it's in the
12 testimony, then I would have said it.

13 Q You don't recall. Well, do you agree with the statement
14 that tax credits and losses are the primary reasons why
15 limited partners invest in LITHC?

16 A They have their reasons for investing. I understand what
17 I see at my end, as the general partner. And from the
18 general partner's perspective, it's important to the limited
19 to receive tax credits and losses.

20 Q And have you or any entity you control ever been a limited
21 partner in a LITHC partnership or been responsible for
22 managing the interests of a LITHC limited partner?

23 A No.

24 Q So to the extent that you are making general statements
25 about what motivates LITHC investors, that would be

1 speculation on your part; is that right?

2 A I suppose.

3 Q But even assuming that tax credits and losses are a
4 primary motivation for investment in LITHC, that does not
5 mean that those are the only benefits to which an investor
6 limited partner is contractually entitled to receive, does
7 it?

8 A You've made a correct statement.

9 Q In fact, in order to answer that question, you'd need to
10 look at the terms of the partnership agreement, the specific
11 partnership agreement in question and any other documents
12 governing the partnership; is that right?

13 A Certainly.

14 Q I'm sorry?

15 A Yes.

16 Q So let's go ahead and pull up on the screen, the Hidden
17 Hills limited partner partnership agreement, which I may
18 refer to as the LPA, just to save syllables. And that's
19 Exhibit 2. And given that the two agreements at issue in
20 this case, the two partnership agreements are virtually
21 identical with respect to the various provisions we're going
22 to be discussing, please assume that these questions apply to
23 both the Hidden Hills LPA and the Parkway LPA. And let me
24 know if my description of the agreement is inaccurate with
25 respect to either of the documents. Okay? That will make

1 things much more efficient.

2 First, do you understand that the general partners of
3 Hidden Hills and Parkway owed fiduciary duties to the
4 partnership and to AMTAX as the investor limited partner?

5 A Yes.

6 Q And, in fact, if we pull up on pages 44 and 45, Sections
7 7.4F and 7.4G on to the screen. We can do them one at a
8 time, Christian, whatever is easiest. Actually, if you just
9 blow up, Chris, the first sentence of 7.4F for now.

10 Do you see there that the 7.4F of the partnership
11 agreement says that the general partner shall have fiduciary
12 responsibility for the safekeeping and use of all funds and
13 assets of the partnership, whether or not in their immediate
14 possession or control?

15 A Yes.

16 Q So that's a contractual memorialization of the general
17 partner's fiduciary duty, correct?

18 A I believe so, yes.

19 Q Then if we go over, Chris, to 7.4G, which is much shorter.
20 We can highlight that whole piece.

21 It says, "No general partner shall contract away the
22 fiduciary duty owed at common law to the limited partners."
23 Do you see that?

24 A Yes.

25 Q That's actually incorporating common law standards of

1 fiduciary duty into this contract, right?

2 MS. LATSINOVA: Objection. Calls for a legal
3 conclusion.

4 THE COURT: I'm sorry, I can't understand you.

5 MS. LATSINOVA: The question calls for a legal
6 conclusion.

7 THE COURT: Overruled.

8 A Could you repeat your question?

9 Q Sure.

10 This provision, Section 7.4G, incorporates into the
11 partnership agreement common law fiduciary duties that a
12 general partner owes to a limited partner in the partnership;
13 is that right?

14 A Again, I'm not an attorney, so I would just repeat the
15 language that's in the partnership, which says, "No general
16 partner shall contract away the fiduciary duty owed at common
17 law to the limited partners."

18 Q Fair enough.

19 Do you recall testifying on direct examination that
20 AMTAX was a passive investor and that the ability to manage
21 or control the partnership belonged to the general partner?

22 A I don't know if I recall or not.

23 Q You don't recall referring to AMTAX as a passive investor?

24 A I simply don't recall.

25 Q Okay. Well, do you agree with the statement that AMTAX is

1 a passive investor?

2 A Can you define "passive"?

3 Q Well, I guess I'm defining it -- maybe we can pull up the
4 -- we'll come back to this, and I'll pull up the quote and we
5 can take a look at this. We'll return to this.

6 So you don't feel able to, based on your understanding
7 of the term "passive," to opine on whether you agree that
8 AMTAX is a passive investor?

9 A AMTAX is a limited partner, I know that.

10 Q Okay. And so if you testified on direct examination that
11 they were a passive investor, would you now want to change
12 that testimony?

13 A I don't believe so.

14 Q So you would continue to say they're a passive investor?

15 A Yes.

16 Q But you'd agree with me that the general partner's --
17 well, actually, yeah, so you'd agree with me that the general
18 partner's fiduciary duties prevent it from exploiting its
19 control over the management of the partnership in order to
20 take advantage of or hide information from the limited
21 partner, correct?

22 A Can you repeat that, please?

23 Q Sure. Would you agree with me that the general partner's
24 fiduciary duties prevent it from exploiting its control over
25 the management of the partnership in order to take advantage

1 of or hide information from the limited partner?

2 A I'm sorry, I don't know.

3 Q So you think there's a possibility that you -- that a
4 general partner could exploit its control over the management
5 of the partnership in order to take advantage of or hide
6 information from the limited partner and still be acting
7 consistently with its fiduciary duties?

8 A Repeat that again, please.

9 Q Sure. If a general partner was exploiting its control
10 over the management of the partnership in order to take
11 advantage of or hide information from the limited partner, in
12 your mind, would that constitute a breach of fiduciary duty?

13 A To be honest, I would want to see a definition of "Take
14 advantage of."

15 Q The partnership agreement refers to the general partners
16 as a fiduciary; is that right?

17 A It does say that, yes.

18 Q You are the general partner, correct?

19 A Correct.

20 Q So you have an obligation to comply with the terms of the
21 partnership agreement; isn't that right?

22 A Yes.

23 Q And if you don't have an understanding of what a
24 fiduciary's responsibilities are to its limited partner, then
25 that will -- that would hinder your ability to fulfill your

1 responsibilities under the agreement, would it not?

2 A Not necessarily.

3 Q Well, going back to AMTAX's control over the partnership,
4 the Hidden Hills LPA and the Parkway LPA, do require the
5 limited partner's consent to certain major capital events,
6 including, for example, a sale or refinancing of the
7 property; is that right?

8 A Yes.

9 Q And in addition to the consent rights, the limited partner
10 also has the right to receive certain financial information
11 about the partnership, including an annual audited financial
12 statement; is that right?

13 A Yes.

14 Q Let's take a look at Section 12.1 at page 64 of Exhibit 2.

15 I want to specifically direct your attention to Section
16 12.1B Romanette ii. So it's at the bottom of page 64. And I
17 really just need that, and then I guess up to B.

18 So, do you understand, Ms. Tamaro, that this Section
19 12.1Bii requires the general partner to deliver an audited
20 financial statement to the limited partners for the
21 partnership no later than March 15th of the calendar year
22 following the year that is being audited?

23 A Yes.

24 Q And you understand that's your obligation, correct?

25 A Yes.

1 Q Do you see -- are there any exceptions in that section
2 that you're aware of?

3 A Not that I see, no.

4 Q Are you just -- generally, are you aware of any exceptions
5 in the partnership agreement to the requirement that the
6 audited financial statement be delivered no later than
7 March 15th?

8 A I'm not aware of any.

9 Q Okay. And do you recall entering into an amendment of the
10 Parkway LPA that moved this reporting deadline from
11 March 15th to February 15th?

12 A Yes. That was included in the amendment that admitted
13 Hearthstone.

14 Q Yeah. That's Exhibit 31. And it's at page 2, Section
15 3.2.1. Is that what you're referring to: The partnership
16 agreement is hereby amended, by deleting the reference to
17 March 15th set forth herein and replacing it with a reference
18 to February 15th?

19 A Yes.

20 Q And this continues to be the operative deadline for the
21 Parkway audited financial statement?

22 A Yes.

23 Q Staying with the various provisions of the partnership
24 agreement that are at issue here, I'd like to direct your
25 attention to Section 4.5, which is at pages 25 and 26 of

1 Exhibit 2.

2 And I'd like to direct your attention, in particular,
3 to Section 4.5A Romanette iv -- excuse me, (2). And Chris is
4 going to highlight that for you. It's on page 26 and it's
5 the item -- it's near the top, that paragraph (2) there.
6 Now, Ms. Tamaro, you understand that this provision allows
7 the limited partner to remove the general partner from its
8 general partner position in the event that the general
9 partner violates any material provision in Article VII, or
10 elsewhere in the agreement. And that the misconduct can
11 reasonably be expected to cause economic detriment to the
12 partnership or the project. Do you see that?

13 A I do.

14 Q Is that consistent with your understanding of the limited
15 partner's removal rights for a breach of the limited
16 partnership agreement?

17 A They do have this right in the partnership agreement.

18 Q Now, I'd like to also direct your attention -- oh, and the
19 other thing I wanted to ask you about is, is there any
20 language that you're aware of in Section 4.5 that requires
21 the limited partner to bring an affirmative derivative claim
22 on behalf of the partnership in order to invoke or exercise
23 its removal rights?

24 A I don't know.

25 Q You don't know the answer to that?

1 A I do not.

2 Q Now, I'd like to also take a look -- staying with 4.5 --
3 I'm sorry, Chris, stay up there. I'd like to go down to --
4 on page 26, item 6.

5 Would you agree with me, Ms. Tamaro, that this
6 provision allows the limited partner to remove the general
7 partner based on a failure to furnish reports as required in
8 Section 12.1?

9 A It does.

10 Q And are you aware of any language in the partnership
11 agreement that imposes the same requirement that the limited
12 partner demonstrate a reasonable expectation of harm to the
13 partnership or project in order to enforce its removal rights
14 based on this provision?

15 A I'm sorry, I don't know.

16 Q You don't know.

17 I'd like to look now at Section 7.4J of the partnership
18 agreement, which is at pages 45 and 46. Chris, if you could
19 bring the whole section, both pages up, and blow them up so
20 we can all see them as best you can.

21 But I'm just going to ask, do you agree, Ms. Tamaro,
22 that the purpose of Section 7.4J is to ensure that the
23 limited partner receive the same amount that it would receive
24 upon a sale of the property to a third party?

25 A The language says that the property is valued through the

1 appraisal process.

2 Q Now, you were involved in the drafting of this partnership
3 agreement; is that right?

4 A I didn't draft it, no.

5 Q You were involved in the negotiations that led up to the
6 execution of this partnership agreement?

7 A The partnership agreement was drafted by the limited
8 partner. And then there were subsequent changes and
9 negotiations before it was executed.

10 Q But presumably, you reviewed it before you signed it?

11 A Yes.

12 Q And did you understand at the time that you signed this
13 agreement that section -- the purpose or intent of Section
14 7.4J is to put the limited partner in the same position
15 economically upon the exercise of your option as they would
16 be if the property were sold to a third party?

17 A Would you repeat that?

18 Q Sure. Did you understand, at the time you signed the
19 partnership agreement, that the intent of Section 7.4J was to
20 put the limited partner in the same place economically, upon
21 the exercise of your option, as they would be if the
22 partnership were to sell the project to a third party?

23 A I can only say that that language is not included in this
24 Section 7.4J.

25 Q Well, I'm asking you about if you had an understanding

1 about the intent behind this agreement.

2 A My understanding of the intent was to provide a mechanism
3 for the general partner to purchase the limited partner's
4 interest.

5 Q But you don't know if that mechanism was intended to give
6 the limited partner the value they would receive if it was
7 sold, if the project was sold to a third party?

8 A I do not know.

9 Q Let's take a look at the mechanisms that are put in here.
10 So the mechanism is that there's an appraisal process,
11 correct?

12 A Correct.

13 Q And the appraisal process is one where an independent MAI
14 appraiser appraises the fair market value of the property; is
15 that right?

16 A Yes.

17 Q And the option price -- it says, if you look at the
18 sentence above what's highlighted there -- the option price
19 shall be the equal of the greater of the fair market value of
20 the interest, without offset, for any lack of control or
21 inability to control management of the investor limited
22 partner. Do you see that?

23 A Yes.

24 Q And so the limited partner's entitled to receive the fair
25 market value of their interest; is that right?

1 A Yes, that is what this language says.

2 Q And the language goes on to provide a method by which to
3 determine the fair market value of that interest. And I
4 think we already mentioned the first step is to get an
5 appraisal of the property by an independent MAI appraiser; is
6 that right?

7 A That is correct.

8 Q And each partner appoints their own appraiser, and then
9 those two appraisers, if they can't agree on a value, they
10 appoint a third appraiser jointly. And the determination of
11 that appraiser will be final and binding; is that right?

12 A That is what the language says.

13 Q Okay. And the appraiser, the third appraiser, the value
14 that they're coming up with is the value of -- their fair
15 market value determination for the property; is that right?

16 A Yes.

17 Q And so this is their, based on their professional
18 experience and expertise, their best guess of what the
19 property would sell for if it were marketed; is that right?

20 A I don't know if that's the correct definition that the
21 appraiser would use.

22 Q Do you have a different understanding of what appraisers
23 do?

24 A They're establishing a value.

25 Q And value is determined by what the market would pay,

1 correct?

2 A Presumably.

3 Q Right. And now that's only the first step, right? Now
4 you've determined the value of the property. But now you
5 actually have to translate that into the option price by
6 running that value through the sales proceed waterfall that's
7 in Section 6.2B; is that right?

8 A In this partnership agreement, yes.

9 Q And in the other partnership agreement that we're
10 discussing?

11 A In the Parkway and Hidden Hills Partnership agreements.

12 Q Sorry, I didn't mean to interrupt. So the partnership
13 agreements that are relevant to this dispute both have this
14 language; is that right?

15 A Yes.

16 Q And the sales proceed waterfall in Section 6.2B, that
17 tells you how much each partner gets if the property is sold
18 to a third party, correct?

19 A If the property is sold, then you would follow that
20 formula to split the sales proceeds. If the property is not
21 sold, then you would follow that formula to establish a
22 hypothetical sales price and resulting payments.

23 Q Right. So if there's an actual sale, then 6.2B applies,
24 right?

25 A Correct.

1 Q If there's a hypothetical sale under Section 7.4J, then
2 6.2B also applies; is that right?

3 A We have used 6.2B to model our hypothetical sale.

4 Q Because 6.2B applies under the terms of this agreement; is
5 that right?

6 A Well, it's in the agreement, that's true.

7 Q You wouldn't model it based on that if that wasn't what
8 was required by the agreement?

9 A We had turned to Section 6.2B to model our hypothetical
10 sales price.

11 Q You wouldn't do that unless that's what the contract told
12 you to do, right?

13 A This contract doesn't directly say go to 6.2B. But we
14 have utilized that because that's the only mechanism in the
15 partnership to run through a waterfall.

16 Q Everyone is in agreement on that, right?

17 A I don't know.

18 Q I think that's one of the few areas where we actually are
19 all in agreement, is that 6.2B applies. But I'm not asking
20 you to commit to what my clients are saying. I just want you
21 to agree that that's your interpretation; is that right?

22 A We have used 6.2B to model our hypothetical sales price.

23 Q Now, if the general partner exercises this option and the
24 appraisal process proceeds as it's supposed to, then I think
25 we already touched on the third appraisal is final and

1 binding, correct?

2 A That's what this language says.

3 Q Right. So the limited partner is required to sell at the
4 option price arrived at by running that value determination
5 through the sales proceed waterfall, correct?

6 A Yes, I believe so.

7 Q I mean, isn't that why you're here, because you think you
8 have a right to force us to go through this process?

9 A Correct.

10 Q So, the limited partner does not have the right to refuse
11 to sell at that option price, if they think it's too low,
12 right?

13 A That's a good question. I don't know.

14 Q You don't know if you think that --

15 A I don't know.

16 Q So you think that -- well, I guess that's kind of why
17 we're here. I guess that's part of why we're here. But
18 you're saying it's not your position that you -- that this is
19 a mandatory option, that if you invoke it properly, that you
20 can compel us to sell even if we don't want to?

21 A Yes, I would agree.

22 Q I thought you might.

23 So, the general partner's exercise of its rights under
24 Section 7.4J does not involve a negotiation over the option
25 price, does it?

1 A What's your definition of "negotiation"?

2 Q What's your definition of "negotiation"?

3 A Back and forth.

4 Q Right. So that's what I'm saying is there's no back and
5 forth here. There's just a strict application of the formula
6 that spits out a number, and that's the number that the
7 limited partner is obligated under the contract to accept to
8 sell their interest; is that right?

9 A Yes, I would agree.

10 Q Okay. I'd now like to spend a few minutes going over some
11 of the statements that you made in your direct examination
12 about the limited partner's return on their investments in
13 Hidden Hills and Parkway.

14 Chris, can you bring up Slide 6 of plaintiffs' opening
15 statement? Ms. Tamaro, this slide, which Ms. Latsinova asked
16 you about in your direct examination, purports to show
17 AMTAX's return on its investment for Hidden Hills and
18 Parkway, based exclusively on tax benefits and losses,
19 correct?

20 A And fees, yes.

21 Q And fees?

22 A Yes.

23 Q So the graphic says, under "return," in parentheses there,
24 federal tax credits and losses. Do you see that?

25 A I do.

1 Q So is that a mistake? Should that also say, "and fees"?

2 A I need to look at my numbers.

3 Q You don't know, sitting here today?

4 A I have to go back and look at my numbers.

5 Q On direct examination, Ms. Latsinova asked you how you
6 came to this number, and my understanding at the time that
7 you gave your examination was that you looked at the tax
8 credits that the partner would receive, based on their
9 investment, you looked at the anticipated tax losses?

10 A Yes.

11 Q And those two components comprised this number. And I
12 don't recall you mentioning anything about fees. Did you --
13 that's consistent with your recollection?

14 A Yes.

15 Q Okay. So let's take a look, then, at the -- maybe just
16 walk me through it. Let's put back up the documents that
17 Ms. Latsinova showed you.

18 So first let's start with Parkway. Chris, can you
19 bring up Exhibit 31 at page 7? Okay.

20 So, Ms. Tamaro, I'll represent to you that this was the
21 document that Ms. Latsinova showed you when she was asking
22 you about this return on investment. And can you explain to
23 me how you determined, based on this, what AMTAX's return on
24 its investment based on tax credits and losses were?

25 A I added them.

1 Q So, you took -- we've actually prepared a slide here. But
2 before we get to that slide, when you say you've added them,
3 I note that the tax losses are in parentheses, so that
4 suggests that those are negative, right? That's what that
5 signifies?

6 A Yes.

7 Q It says right up there that's losses?

8 A Yes.

9 Q And I note that the 2002 date has -- does not have
10 parentheses around it. Do you see that?

11 A I do.

12 Q And so in order to -- when you say "add them up" on the
13 tax losses, did you add up all of the negatives and then
14 subtract the positive to get to the losses? It seems that
15 would be the right way to do it, I just wanted to make sure
16 that is how you did it.

17 A I believe so.

18 Q Because the loss here is a positive, right? The loss is a
19 good thing for the investor, right?

20 A Yes.

21 Q Because the loss then allows them to take that loss and
22 reduce their income on their income taxes and pay less income
23 taxes, correct?

24 A Yes.

25 Q So that's why it's a benefit to the limited partner; is

1 that right?

2 A Yes.

3 Q Okay. So what you did was -- and let's bring up the
4 slide, if we could, Chris, that has -- well, maybe let's go
5 to Hidden Hills first. Can you go to the source document,
6 which is Exhibit 2 at page 20?

7 And if you look at the top paragraph there, that's what
8 Ms. Latsinova showed you. That's the \$4,257,838 in tax
9 credits, right?

10 A Yes. Is this Parkway or Hidden Hills?

11 Q I believe this is Hidden Hills, based on the notation down
12 on the bottom left corner of the document, it says, "Hidden
13 Hills."

14 A Okay.

15 Q This is from Exhibit 2, which is definitely Hidden Hills.

16 And then the tax losses -- I actually don't have in my
17 notes here where that is. I think it might be on Schedule A.
18 But instead of trying to find that, we went ahead and made an
19 Excel spreadsheet.

20 And, Chris, maybe you can bring that up.

21 THE COURT: Why don't we hold that thought. We'll
22 take our midmorning break, and we'll be at recess for
23 15 minutes.

24 MR. PETTIT: Thank you, Your Honor.

25 (Recessed.)

1 THE COURT: Mr. Pettit, you may proceed.

2 MR. PETTIT: Thank you, Your Honor.

3 Before we go back into the return on investment to the
4 limited partners, I wanted to pull up the testimony from
5 direct examination regarding passive investors. Can you pull
6 that up, Chris?

7 CROSS-EXAMINATION (Resumed)

8 BY MR. PETTIT:

9 Q Do you see there, Ms. Tamaro, that on direct examination
10 Ms. Latsinova asked you, "You talked about the role of the
11 limited partner. I want to ask specifically, does the
12 limited partner have any management responsibilities?" You
13 answered, "No, they are a limited partner." She went on to
14 ask you, "Are they a passive investor?" You said, "They
15 are."

16 Do you see that?

17 A I do.

18 Q Is that consistent with your position as you sit there
19 right now?

20 A I would say yes. If the opposite is an active investor,
21 that is not their role.

22 Q Right. Maybe the reason why there is some hesitation is
23 they do have some significant consent rights; is that right?

24 A Consent rights, to me, are different than management
25 rights.

1 Q I guess I am trying to understand why you are hesitating
2 to refer to them as passive if you think --

3 A I am thinking through the definition. If the opposite
4 would be active, I don't perceive them to be active investors
5 because they are a limited partner.

6 Q They are a limited partner that has specifically
7 enumerated contractual rights in the partnership agreement,
8 correct?

9 A They do.

10 Q The partnership agreement goes on to say that the
11 management in control of the partnership will belong to the
12 general partner; is that right?

13 A It does say that.

14 Q Let's go back to trying to unpack this slide that was
15 prepared and you testified about on direct examination. What
16 I am going to do is I have -- now that you have explained
17 what you did, I am going to have Chris bring up an Excel
18 spreadsheet, just because it helps validate that all this
19 math is correct.

20 A I would like to comment that actually what I did do is go
21 through the K-1s on the actual tax returns to get those
22 numbers. Those were not pulled from the schedules -- the
23 projected schedules.

24 Q Okay. What you are saying is your methodology is as you
25 described, but the numbers that you used are different than

1 what Ms. Latsinova showed you on direct examination?

2 A I used the actual tax returns.

3 Q That's not what she showed you, right?

4 A She is showing the projections from the partnership
5 agreement looking forward. I have used the actual returns.

6 Q So when she walked you through to have you explain how you
7 arrived at those numbers, that was inconsistent with how you
8 actually did it; is that right?

9 A I used the actual tax returns to get those numbers.

10 Q Well, putting -- maybe we don't need to look at the Excel
11 spreadsheet, and we can cut through some of this.

12 There were a couple of things I wanted to ask you about
13 with respect to the methodology. Now, I believe you said you
14 added up all the tax losses, and then you added that to the
15 tax credits, and that gave you your return; is that right?

16 A Yes.

17 Q Now a dollar in tax losses is not worth a dollar, is it?

18 A A dollar in tax losses is not worth a dollar? I would say
19 that does depend on what happened.

20 Q Are you aware of any taxpayer in this country that has 100
21 percent tax rate?

22 A No, I hope not.

23 Q By definition, if you are taking a tax loss to reduce your
24 income tax, you are not getting the full dollar benefit of
25 that tax loss, correct?

1 A That would be correct.

2 Q Yeah, so if you have a 40 percent taxable rate, for
3 example, on your income, and you have enough income to
4 actually take advantage of the losses, then the value of that
5 dollar of tax loss would be 40 cents, correct?

6 A Yes.

7 Q All right. Did you take that fact into account when you
8 were calculating the return on investment to the limited
9 partner?

10 A I added up the gross losses.

11 Q Sorry. Can you answer my question?

12 A I added up the gross losses, the total losses, the
13 total write-offs.

14 Q Would you agree with me that is misleading or inaccurate
15 in terms of the return that they actually enjoyed in
16 connection with the losses?

17 A I am not going to comment on how they calculate their
18 return. What I am showing is the losses and the tax credits
19 as they flowed through the K-1s.

20 Q Are you continuing to say that you think it is appropriate
21 for a tax -- a dollar of tax loss to be considered a dollar
22 return on their investment?

23 A I think that would be their tax question, not mine.

24 Q You don't have an answer to that question?

25 A I don't. I can't opine on their tax return.

1 Q You have a bachelor's degree in economics, correct?

2 A I do.

3 Q You are the general partner of nine LITHC partnerships,
4 correct?

5 A I am.

6 Q You prepare the tax returns for the partnerships?

7 A No, I do not.

8 Q Do you coordinate with an accounting firm to prepare the
9 tax returns for those partnerships?

10 A I give the tax accountant the information and he prepares
11 the returns.

12 Q You are unable to give an answer as to whether the fact
13 that a taxpayer doesn't pay 100 percent in taxable rate means
14 that a dollar in tax losses is not worth a dollar?

15 A I cannot comment on AMTAX's tax position. You are -- your
16 statement in general is correct, that a loss is, what shall
17 we say, connected with your tax bracket.

18 Q You didn't take that into account in doing your
19 calculations?

20 A I did not.

21 Q If you did take that into account, that would reduce the
22 amount of return that you would calculate for the limited
23 partner; isn't that right?

24 A Possibly.

25 Q The other thing about tax losses is you can only take

1 advantage of them if you have income; is that right?

2 A That's my understanding, yes.

3 Q When the partnership generates tax losses, who gets the
4 benefit of those losses?

5 A It depends -- well, it is allocated between the limiteds
6 and the general partner, depending on a number of factors.
7 Depends on if the -- the capital account has reached zero.
8 Another factor is if the general partner has been advancing
9 funds, then, as I understand it under tax law, some of the
10 losses are allocated over to the general partner.

11 Q When the limited partner's capital account balance reaches
12 zero, then tax losses are allocated to the general partner;
13 is that right?

14 A In this partnership, yes, that is what we have done.

15 Q In both partnerships?

16 A In both of them, yes.

17 Q Once the investor's capital account is at zero, if there
18 are any further losses generated by the partnership, any tax
19 benefits associated with those losses would go to you, not
20 the limited partners, correct?

21 A Yes, that is what has happened thus far. I have been
22 allocated losses -- once -- my understanding, and the
23 partnerships that I have seen, are that the investor wants to
24 get the benefit of the full write-off when they reached a
25 zero capital account, then they tend to allocate the losses

1 to the general at that point.

2 Q Does the -- doesn't the schedule -- the schedules that we
3 were looking at forecast that the tax losses and the
4 depletion of the limited partner's capital account will occur
5 gradually over time so that the limited partner has the
6 ability to take advantage of those tax losses over multiple
7 tax seasons?

8 A That is tax planning on their side. They made their best
9 guess at projections when they put their projections
10 together. That's what they anticipated would happen.

11 Q Do you know whether the capital account of the limited
12 partners in these partnerships depleted at a more accelerated
13 pace than what was anticipated?

14 A I would have to look at the tax returns.

15 Q Let's pull up Exhibit A-78.

16 Exhibit A-78 is an email exchange that you had with
17 Gary Squires. Who is Gary Squires?

18 A Gary Squires does the tax returns.

19 Q That is your accountant?

20 A He is with Squires Maddux.

21 Q You write to him on February 1st, 2016, "Zero capital
22 account for the LP," exclamation point, exclamation point,
23 exclamation point, exclamation point. Do you see that?

24 A I do.

25 Q The subject line is "Parkway." Do you see that?

1 A I do.

2 Q This email relates to Parkway Partnership that is at issue
3 in this litigation, correct?

4 A It does.

5 Q Why the four exclamations points?

6 A I don't recall, actually.

7 Q Is it because once -- as we have been discussing, once the
8 general partner's capital account reaches zero, all of the
9 taxable losses can be used by you to offset your income and
10 therefore providing economic benefit to you?

11 A No, it was because one of -- one of the things I was
12 supposed to do as general partner was to bring them to a zero
13 capital account, and I had done that.

14 Q Oh, you just said a minute ago you didn't know why you
15 were putting the exclamations points there, but now is it
16 that you are saying you are commending yourself for a good
17 job at accomplishing bringing the capital account down to
18 zero, that's why you put the exclamations points there?

19 A Could be.

20 Q You just don't know?

21 A It has been a few years since I wrote the email.

22 Q You don't recall the reason why you sent that?

23 A I recall that in that return the investor's capital
24 account had reached zero, and that was one of the goals of
25 all these partnerships. I have seen partnerships where the

1 capital account didn't reach zero, and you have to give the
2 capital back. The goal, as they enter into it, is to reach
3 zero, and we had reached zero that year for Parkway.

4 Q Just so I am clear, this email exchange relates to the
5 filing of Parkway's tax returns; is that right?

6 A It does.

7 Q Now I would like to discuss with you what the general
8 partner -- we have talked about what the limited partner
9 contributed in terms of their investment and their return on
10 their investment. I would like to discuss now what the
11 general partner contributed and received for its involvement
12 in the two partnerships. First, I would like to pull up
13 Schedule A for the two partnerships, which are at Exhibit 2
14 at 82 and Exhibit 3 at 80.

15 Ms. Tamaro, is it -- am I reading this correctly, the
16 managing general partner's initial capital contribution was
17 \$3,028?

18 A On the capital side, yes, it was \$3,028.

19 Q We are talking about equity investment here.

20 A Equity, correct, not debt.

21 Q On the managing general partner for the other partnership,
22 the Parkway Partnership, the equity contribution was \$260; is
23 that right?

24 A Yes.

25 Q Does this accurately identify the equity contributions of

1 the general partner to the two partnerships in dispute here?

2 A Yes, it is set up this way so that the -- you can see that
3 the limited partner owns -- we are trying to maximize the
4 ownership share of the limited partners so we maximize the
5 tax benefits going to them.

6 Q Right. That is how these vehicles are set up, right?

7 A Yes.

8 Q You still -- it is still a fact that you only had to put
9 \$3,000 of equity into Hidden Hills and \$260 of equity into
10 Parkway?

11 A Of equity, yes.

12 Q Let's discuss what the general partner gets in return for
13 that investment. We just addressed the fact that the general
14 partner gets tax losses that can offset income. The ability
15 to take those losses on your tax returns flows up to you as
16 owner of the GP, correct?

17 A Would you repeat that?

18 Q Does the ability to take the losses on the tax returns
19 ultimately flow up to you?

20 A I'm sorry, I am not following your question.

21 Q Do you get the benefit of the tax losses that flow to the
22 GP?

23 A Okay, if the GP receives an allocation of --

24 Q Yes.

25 A -- gains or losses --

1 Q Of losses.

2 A -- the GP is an LLC, it flows through to the LLC members;
3 if I am a member, yes, it would flow through to me.

4 Q And you are a member?

5 A Of which one? Of the general partners?

6 Q Yes.

7 A Yes.

8 Q So you are one of the people to whom these tax benefits or
9 the benefits from the tax losses would ultimately flow up to,
10 correct?

11 A Yes.

12 Q So to the extent that you are filing your personal income
13 tax statement and you have a significant amount of positive
14 income, you can take advantage of tax losses that were
15 suffered -- of losses that were incurred by the operating
16 partnerships here; is that right?

17 A Possibly, yes.

18 Q Have you done that in the past?

19 A I have offset income with losses, yes, from partnerships.

20 Q From these two partnerships?

21 A I believe so, yes.

22 Q So that is the tax losses. You get that.

23 Now, I think you also said in your direct examination
24 that one of the prime motivations for you to enter into these
25 partnerships as a general partner was to secure the option,

1 that we are discussing here, to purchase the limited
2 partner's interest in the partnerships at the close of the
3 compliance period; is that right?

4 A Yes.

5 Q Now, I recognize and am in no way intending by this
6 question to minimize the importance of having control over
7 the disposition of the project, which I know you value very
8 highly. As we discussed earlier, the price that you were
9 required to pay under the Section .4.J is the full amount
10 that the limited partner would receive in the event the
11 project was sold to a third party; is that right?

12 A The price is the price as calculated in Section 7.4.J. It
13 doesn't refer to what would otherwise happen. It simply
14 refers to Section 7.4.J, we get three appraisals and work
15 through.

16 Q Fair enough. I don't want to go through that again.

17 THE COURT: I know the point. I get it.

18 BY MR. PETTIT:

19 Q Setting aside the value of the control, you are not
20 getting any discount on the limited partner's economic,
21 right?

22 A Again, I am not following you.

23 Q You are not getting a discount on what the limited partner
24 would otherwise get if the project were sold to a third
25 party. You are not paying them less than what the

1 partnership would have to pay out to them through the sale
2 proceeds waterfall; is that right?

3 A Can you --

4 Q I will --

5 THE COURT: There is no management discount.

6 MR. PETTIT: Correct.

7 BY MR. PETTIT:

8 Q No lack of control discount for the limited partner; is
9 that right?

10 A That is correct. That is not in the paragraph.

11 MR. PETTIT: Thank you, Your Honor, much clearer. I
12 appreciate it.

13 BY MR. PETTIT:

14 Q Now, you also receive lots of -- when I say "you," I mean
15 the general partners here and affiliates, receive lots of
16 other economic incentives for your role in developing and
17 operating Hidden Hills and Parkway; isn't that right?

18 A There are -- there are economic incentives for us to do
19 it, yes.

20 Q Those incentives are independent of your option right,
21 correct?

22 A They are.

23 Q For example, you were the developer on these projects,
24 right?

25 A Well, I would have to look. It may have been an

1 affiliate. It would have been at least an affiliate, yes.

2 Q For the purposes of these questions, you can assume when I
3 say "you," I mean you or someone with whom you are -- some
4 person or entity with whom you are affiliated.

5 You received developer fees for your role as developer
6 of the two projects, right?

7 A Yes.

8 Q And that is as the developer you get those fees. Then you
9 are also entitled, in your capacity as general partner, to a
10 partnership management fee that is described in Section
11 7.10.C of the limited partnership agreement; is that right?

12 A Well, it has never been paid. It is in the partnership
13 agreement, but it has never been paid.

14 Q That is a fee you are entitled to receive under this
15 partnership agreement?

16 A If there were money, I would be entitled to it.

17 Q If we go down do the next section, Section 7.10.D, there
18 is an incentive supervisory fee that you are entitled to in
19 your capacity as the managing general partner, correct?

20 A If there were money to pay it, I would be entitled to it,
21 yes.

22 Q If there were a sale of the property to a third party,
23 then that would generate proceeds that could potentially be
24 used to pay those fees, correct?

25 A Yes.

1 Q In addition to those fees -- so we have the developer
2 fees, we have all the general partner fees, then you also
3 have the right, as the general partner, to select the
4 management agent; isn't that right?

5 A Yes.

6 Q The management agent for these two properties is Trieste,
7 correct?

8 A Yes.

9 Q Trieste, in its capacity as the managing agent for these
10 two partnerships, gets fees itself, correct?

11 A It does.

12 Q Those are actually set out in the partnership agreement,
13 right?

14 A Yes.

15 Q It is four percent of rental income?

16 A The partnership would pay anyone to manage the property.
17 If the management company is an affiliate, yes, the
18 management company receives that fee -- the affiliate
19 receives that fee.

20 Q Of four percent?

21 A Yes.

22 Q That affiliate -- here the managing agent is Trieste for
23 this property?

24 A Correct.

25 Q So you get paid that way, too?

1 A Correct.

2 Q Then, if you need to hire some other person to help the
3 partnership, like let's say, for example, if you had to hire
4 a lawyer to help the partnership, who gets to make that
5 decision?

6 A Typically the general partner would make that decision.

7 Q That would be you, right?

8 A Correct.

9 Q To the extent that you exercised that authority to pick an
10 affiliate to perform those services, then the partnership
11 pays the affiliate the fees incurred in connection with the
12 services that they perform; is that right?

13 A Because it is an affiliate, the fees have to -- they
14 simply have been incurred. They haven't been paid yet.

15 Q They just go on the balance sheet?

16 A Correct.

17 Q They have to get paid at some point, correct?

18 A Hopefully, yes.

19 Q Yeah. If there is enough money through the waterfall,
20 then that is how they get -- they get paid through the sale
21 proceeds waterfall, right?

22 A Yes, if there has not been sufficient cash flow over the
23 life of the project.

24 Q Right. There is actually provisions where they could be
25 paid through operating cash flow; is that right?

1 A Yes, if there were sufficient operating cash flow.

2 Q If there was insufficient operating cash flow, then they
3 could be paid through the proceeds upon the liquidation of
4 the partnership; is that right?

5 A Correct.

6 Q Have you attempted to quantify all of these economics to
7 come up with a projection of the general partners' return on
8 their investment as you did with the limited partners?

9 A No, I have not.

10 Q I want to talk specifically about the Hidden Hills
11 project. Do you recall discussing on direct examination
12 yesterday the fact that there was known arsenic contamination
13 on the Hidden Hills property at the time of the formation of
14 the partnership?

15 A I recall.

16 Q You mentioned that there was an environmental escrow
17 created to cover the costs of environmental remediation,
18 should it be required; is that correct?

19 A Yes.

20 Q I would like to bring up Exhibit A-290 on the screen. I
21 just want to confirm that that is the escrow agreement you
22 were referring to in your direct examination?

23 A Yes.

24 Q Now, you testified at your deposition that you don't
25 specifically remember anything about the negotiations

1 surrounding the creation of this agreement; isn't that right?

2 A Yes.

3 Q Now, at the same time that this environmental escrow was
4 established, the general partner also entered into an
5 agreement to indemnify AMTAX against any costs or losses
6 associated with the environmental condition of Hidden Hills;
7 is that right?

8 A Yes.

9 Q I am going to put Exhibit A-2 up on the screen. I am not
10 going to spend any time on this because Your Honor has
11 already ruled on this. I just want to confirm that Exhibit
12 A-2 is the environmental indemnity that you gave to AMTAX
13 when they committed to investing in Hidden Hills?

14 A Yes.

15 MR. PETTIT: I ask that Exhibit A-2 be admitted into
16 evidence.

17 THE COURT: Any objection?

18 MS. LATSINOVA: No.

19 THE COURT: A-2 is admitted.

20 (Exhibit A-2 admitted.)

21 BY MR. PETTIT:

22 Q Just to be clear, Ms. Tamaro, at the time you entered into
23 these agreements, there was no affirmative obligation from
24 any regulatory agency for the owner to perform any mandatory
25 remediation on the property, correct?

1 A That is correct.

2 Q In fact, to this day, as far as you are aware, there is no
3 requirement from Washington's Department of Ecology or any
4 other state or federal agency obligating the property owner
5 to perform any remediation work; is that correct?

6 A Yes.

7 Q I understand at some point the playground area was cleaned
8 up; is that right?

9 A Yes.

10 Q That work was voluntary, not mandatory, correct?

11 A Yes.

12 Q I would like to take you now -- I am going to move as
13 quickly as I can. I want to take you through the chronology
14 of the events leading up to your appointment of Colliers as a
15 third appraiser. I would like to bring up Exhibit A-77 on
16 the screen.

17 A-77 is an email exchange between you and Will Bennett
18 at CBRE from January of 2016; do you see that?

19 A I do.

20 Q Is it your understanding that at or around this time you
21 commissioned CBRE to perform an appraisal of this project?

22 A Yes.

23 Q Is it your understanding this email was sent in connection
24 with those efforts?

25 A Yes.

1 Q If you look at the middle of page, the email from you, you
2 say, "I am mailing you a packet of documents in
3 correspondence regarding the documentation of the lead and
4 arsenic in the soil at Hidden Hills which documents the work
5 we did to come up with the remediation plan. You will
6 probably have questions, so feel free to call." Do you see
7 that?

8 A Yes.

9 Q Now, you brought up this environmental contamination to
10 CBRE; is that right?

11 A I did.

12 Q At the time that you retained -- you told them this
13 because you wanted them to take the presence of the
14 environmental contamination into account when performing
15 their appraisal; is that right?

16 A It had been taken into account when we purchased the
17 property, and so in my experience that was an appropriate
18 thing to adjust for.

19 Q That is why you sent this information to them?

20 A Yes.

21 Q Again, this was in connection with an appraisal you
22 commissioned from CBRE in early 2016; is that right?

23 A Yes.

24 Q You didn't tell the limited partner that you were
25 commissioning this appraisal; is that right?

1 A No, I did not.

2 Q Who paid for this appraisal?

3 A Hidden Hills paid for it.

4 Q When you say "Hidden Hills"?

5 A Hidden Hills, the partnership, paid for it.

6 Q Not Hidden Hills Management?

7 A Correct.

8 Q So let's take a look at Exhibit A-79. Is that the CBRE
9 appraisal from early 2016?

10 A Yes.

11 Q If you go to page 2 -- actually, sorry, give me a moment.
12 No, sorry. We can move past this document.

13 Let's go to -- pardon me, Your Honor.

14 Chris, can we please pull up A-79? That is the
15 exhibit. Sorry. Let's go to the next page. Next page.
16 Next page. Keep going until I tell you to stop. Keep going.
17 Keep going. Keep going. Okay. Go back one page. Let's
18 highlight the last bullet point there.

19 Ms. Tamaro, CBRE wrote in its appraisal in February of
20 2016, "It is our understanding that portions of the subject's
21 surface soil contains concentrations of arsenic above the
22 current clean-up and action levels of the Department of
23 Ecology in the State of Washington. It is also our
24 understanding that approximately \$1.5 million has been set
25 aside in escrow since the subject was originally purchased in

1 2002 for the clean-up of the soil contamination. We are
2 making the extraordinary assumption that this amount will
3 fully cover the soil remediation and clean-up costs and no
4 further cost is required for this environmental issue." Do
5 you see that?

6 A Yes.

7 Q Was it your understanding, based on this language, that
8 the CBRE appraisal in February of 2016 did not reduce its
9 value determination based on the presence of environmental
10 contamination on the property?

11 A What I discussed with Will Bennett is how to -- how to
12 bring forward the estimates that we had done back in 2001.
13 He didn't really know how to do it. He just put in this
14 extraordinary assumption that said, I know about it, and at
15 this point all we can do is estimate this cost that I had
16 been dealing with, that I had had on record since 2001, would
17 be equal to the amount of the escrow.

18 Q So there was no reduction?

19 A I would have to look at this appraisal to recall.

20 Q The fact that it says "no further cost is required for
21 this environmental issue" doesn't tell you that there was no
22 reduction?

23 A That is a different question than what the value would
24 have been to bring forward our 2001 reports, and that is what
25 Will and I were discussing, is how to bring forward the 2001

1 results and bring them up-to-date, and then he put this in as
2 an extraordinary assumption that said, "We know it is there,
3 but we don't know how to account for it."

4 Q Okay. Now, let's take a look at Exhibit --

5 A I would also like to note that I was using this for
6 property tax purposes.

7 Q Okay. Now, in November of 2016, so several months after
8 you obtained this appraisal, you reached out to EPI, which is
9 an environmental consulting company; is that right?

10 A Yes.

11 Q You commissioned -- now EPI was involved in testing at the
12 property back when the partnership was formed; is that right?

13 A They had worked for the seller, yes.

14 Q In connection with their work for the seller, they did
15 some testing at the property; is that right?

16 A They did, yes.

17 Q You reached out to them and asked them to prepare an
18 updated Phase I environmental site assessment, correct?

19 A Yes.

20 Q Why did you do that?

21 A I actually had contacted them to -- again, to bring
22 forward our 2001 report. My memory is that Brett Carp said
23 the way we do it is with the Phase I.

24 Q The Phase I comes first and it is sort of a prerequisite
25 to have a Phase I report before you can get an updated cost

1 estimate; is that right?

2 A I remember that he wanted to do a -- update the Phase I
3 first before he looked at updating the cost.

4 Q You came to him and said I want to get an updated cost
5 estimate. He said, well, if you want to do that you have to
6 get an updated Phase I first; is that right?

7 A I don't know if he said it in those words. I know that
8 that is how they proceeded was to first do a Phase I report.

9 Q Your objective from the outset was to get an updated cost
10 estimate; is that right?

11 A Yes.

12 Q The reason why you wanted to get an updated cost estimate
13 is because you wanted to have that cost estimate to share
14 with appraisers in connection with their appraisals of the
15 property in the future; is that right?

16 A I was getting the cost updated because, as I said, to me
17 that -- they had been very relevant based on -- it was
18 difficult to close that deal. This issue at the time had
19 been very relevant to the lenders. I needed to see -- in my
20 mind, I needed to see what the cost would look like today
21 compared to 15 years ago to know where the property stood.

22 Q Why did you need to know where the property stood?

23 A It still had the same issue, which was the contamination.

24 Q Okay. But why were you getting an updated report, is what
25 I am trying to understand?

1 A Well, to bring the cost current.

2 Q To what objective? To what end?

3 A So that I would understand what the current cost looked
4 like compared to what I had from 2001.

5 Q Was it so you would have an ability to negotiate with the
6 limited partner for as low a buyout price as possible and use
7 this as leverage as part of those negotiations?

8 A It was so I had all the information that I thought was
9 relevant on the property.

10 Q Let's take a look at Exhibit A-92. Ms. Tamaro, is that
11 the Phase 1 ESA that EPI prepared?

12 A Yes.

13 Q November 3rd, 2016; is that right?

14 A Yes.

15 Q You commissioned them to prepare this; is that right?

16 A Hidden Hills commissioned them.

17 Q The partnership commissioned the report?

18 A Correct, that's what it says.

19 Q The person who actually contacted EPI was you; is that
20 right?

21 A Correct.

22 Q In your capacity as the general partner of the Hidden
23 Hills Partnership?

24 A Correct.

25 Q So who paid for this?

1 A The partnership paid for this.

2 Q And let's go to Exhibit A-93. Ms. Tamaro, if --

3 Can you go to the second page, Chris? Go to the first
4 email in the sequence here.

5 So, Brett Carp, who is Brett Carp?

6 A He is a senior environmental scientist at Environmental
7 Partners.

8 Q Was he your primary point of contact in connection with
9 work that was performed by EPI for Hidden Hills?

10 A He was.

11 Q So this is an email from Mr. Carp to you dated November 8,
12 2016. It says, "Hi Catherine, I forgot to talk over one item
13 yesterday. What level of detail do you need for the
14 remediation cost estimate? I see two options." Do you see
15 that?

16 A Yes.

17 Q Do you recall having a conversation with Brett Carp at EPI
18 immediately before this November 8, 2016?

19 A I don't recall. The email does refer to it.

20 Q Okay. Is the email -- in addition to referring to having
21 a call, is the email consistent with your recollection that
22 your purpose in getting the Phase I ESI was to take a first
23 step with the ultimate objective of getting a cost estimate?

24 A Yes.

25 Q Was this communication that you had with EPI sort of part

1 of the second step of then going ahead and getting the cost
2 estimate?

3 A Yes.

4 Q He gives you a couple of different options for cost
5 estimates. You write back on the same day, "For now, I need
6 the planning level cost estimate. I will present that to the
7 limited partner right after January 1 and their response will
8 tell me whether I need to obtain the actual quotes. If the
9 LP challenges the planning level estimate, then I will need
10 to obtain actual quotes." Do you see that?

11 A I do.

12 Q Does this refresh your recollection as to your purpose for
13 obtaining the environmental remediation cost estimates for
14 the Hidden Hills property at this time?

15 A Yes.

16 Q Wasn't the reason for you obtaining these cost estimates
17 so that you would have -- be able to present them to the
18 limited partner in connection with what you expected would be
19 a negotiation about their buyout price?

20 A Would you repeat that?

21 Q Sure.

22 MR. PETTIT: Can you read the question back?

23 (Reporter read back the requested portion.)

24 A I felt this information was relevant to the value of the
25 property.

1 Q Can you answer my question?

2 A Can you read it one more time?

3 (Reporter read back the requested portion.)

4 A I can only respond and say I felt that was information
5 relevant to the price of the property.

6 Q Before we move off of the Phase I ESA and into the
7 technical memorandum, you didn't tell the limited partner
8 about the fact that you had -- or I should say that the
9 partnership had hired EPI to prepare the Phase I ESA; is that
10 right?

11 A Not at that time.

12 Q You understood that any Phase I ESA that you obtained,
13 including the one you did end up obtaining, would need to be
14 disclosed to potential buyers; is that right?

15 A Say that again.

16 Q You understood that the Phase I ESA would need to be
17 disclosed to potential buyers of the property, correct?

18 A I had this one, and I had others that were done on the
19 property over the years. I have more than one which
20 presumably would all need to be disclosed, yes.

21 Q Including this new one you prepared in November of 2016?

22 A Yes.

23 Q Let's take a look at Exhibit A-95. This is a later email
24 exchange between you and Mr. Carp, and I will represent to
25 you, you were asking about -- in the bottom of the email you

1 ask about the report. I think what you are looking for is a
2 link to the ESI report. He sends you a fresh link and he
3 said, "I must apologize that I am behind on getting the
4 planning level cost estimate over to you. We have had a
5 scramble. We are trying to wrap up projects. I am working
6 to get it out to you before the holiday at the latest." Do
7 you see that?

8 A I do.

9 Q You responded, "I am okay" -- you responded on December 7,
10 "I am okay right now, but was planning to start negotiations
11 with the limited partner right after January 1. So hopefully
12 you can get some numbers to me sometime in December." Do you
13 see that?

14 A I do.

15 Q You wrote that, right?

16 A Yes.

17 Q When you wrote that, weren't you communicating that you
18 intended to use the technical memorandum and cost estimate
19 that EPI was preparing in negotiations with the limited
20 partner right after January 1?

21 A That is what it appears to be, yes.

22 Q That would be January 1, 2017, correct?

23 A Yes.

24 Q That was the first day of your option exercise period for
25 Hidden Hills; is that right?

1 A Yes.

2 Q Why did you think this would be helpful in negotiations?

3 A I believed it to be relevant to the value of the property.

4 Q I'm sorry. Can you say that again? I misunderstood.

5 A I believed it to be relevant to the value of the property.

6 Q How would that help you in negotiations?

7 A It would be taken into account in the pricing of the
8 property.

9 Q It would help bring the buyout price down?

10 A That would leave me with contaminated property, yes.

11 Q Contaminated property that you were under no regulatory
12 obligation to clean up; is that right?

13 A Under no regulatory agreement, you are correct.

14 Q In fact, you don't have any current plan in place to
15 perform in remediation, do you?

16 A Right now, I do not, no.

17 Q You understood at the time, however, that when you
18 solicited the technical memorandum in late 2016, that if
19 remediation happened while the investor limited partner was
20 still a partner, then the general partner would be
21 responsible for paying for those remediation costs, correct?

22 A Can you read the question back?

23 Q Sure. You understood at the time that you commissioned
24 the Phase I ESI and the technical memorandum that under an
25 environmental indemnity agreement, if the remediation

1 happened while AMTAX was still a limited partner, then the
2 general partner would be responsible for covering those
3 costs, correct?

4 A I am going to say that was not the understanding at the
5 time that the agreement was signed, but it has been decided
6 since then.

7 Q Well, let's take a listen and look at video clip 240,
8 which is from your deposition in this matter, which preceded
9 the Court's summary judgment, specifically at page -- page
10 376, lines 17 through 22.

11 (Video clip played.)

12 Q That was your testimony in your deposition; is that right?

13 A Correct, that was regarding the voluntary clean-up
14 program.

15 Q Is there -- I am not sure I understand.

16 A You were referring to an external requirement, which is
17 different than the voluntary clean-up program.

18 Q You are saying that if there was a mandatory obligation to
19 clean up the property, then -- while AMTAX was still a
20 partner, then the general partner wouldn't be responsible?

21 A No. I am just saying that is what my testimony was about,
22 was the voluntary clean-up program.

23 Q Let me ask you right now, outside of the context of the
24 voluntary clean-up program, if there was a mandatory
25 requirement that the partnership clean up the property while

1 AMTAX was still a partner, who would pay for it?

2 A We would first draw down the environmental escrow, then if
3 there was more, then, yes, it would turn to the general
4 partner.

5 Q Did you take that fact into account when you were deciding
6 to use the environmental costs associated with remediation in
7 your negotiations with the limited partner?

8 A No, I did not.

9 Q In fact, you still thought that, notwithstanding that
10 fact, it was appropriate to reduce the appraised value for
11 purposes of determining the limited partner's interest based
12 on contamination; is that right?

13 A Say that again.

14 Q Notwithstanding the fact that you as the general partner
15 would be required to remediate the property and pay for it if
16 AMTAX was still a partner, you still thought it was
17 appropriate to reduce the appraised value for purposes of
18 determining AMTAX's buyout price based on the environmental
19 contamination, didn't you?

20 A Yes.

21 Q Let's take a look at Exhibit A-104. So Exhibit A-104 is
22 the technical memorandum?

23 A Yes.

24 Q This is the first one, correct?

25 A Yes.

1 Q There was a second one, too, later, correct?

2 A Yes.

3 Q This one is from January 3rd, 2017; is that right?

4 A Yes.

5 Q This is what you hired EPI to do. This is what you wanted
6 from them, their cost estimate, correct?

7 A Yes.

8 Q Let's go to page 9. I'm sorry. Give me one moment.

9 Let's go to page 7. This is their estimate, right?

10 A Yes.

11 Q This is their estimate from January 2017. There is a high
12 end and a low end; is that right?

13 A Yes.

14 Q Low end is about 1.5 million, the high end is about 2.5
15 million; is that right?

16 A Yes.

17 Q You can see under Task 5 there is a -- under "excavation"
18 it has -- shows a one-foot-low and two-feet-high. Do you see
19 that?

20 A Yes.

21 Q The price for the low and the high there, one is twice
22 what the other one is, right?

23 A Yes.

24 Q So does this suggest to you that EPI was giving a cost
25 estimate based on two potential remediation approaches, one

1 that removed one foot of top soil and the other two feet of
2 top soil?

3 A It would suggest that, yes.

4 Q Do you know whether or not EPI reached a conclusion as to
5 whether it would be necessary for Hidden Hills to remove two
6 feet of top soil in order to comply with clean-up standards
7 from Department of Ecology for arsenic?

8 A With this report?

9 Q At any time.

10 A I don't know.

11 Q Now, you didn't provide this technical memorandum to the
12 limited partner at this time, did you?

13 A At this time, no.

14 Q You didn't tell them that the partnership had hired EPI to
15 perform -- or to calculate this estimate, right?

16 A I told them in a letter a little bit later, but not at
17 this time, no.

18 Q And the partnership paid for this, right?

19 A Correct.

20 Q And what benefit was the partnership getting for this
21 report -- preparation of this report?

22 A Updated information.

23 Q Why was that updated information valuable to the
24 partnership?

25 A So it understood the current cost of the clean-up.

1 Q Like the Phase I ESI, you understood that the technical
2 memorandum would need to be disclosed to potential buyers,
3 correct?

4 A I was not thinking about potential buyers at that time.

5 Q You understood that the technical memorandum would need to
6 be provided or disclosed to potential buyers, right?

7 A To my mind, that report is not any different than the 2001
8 report, which would also have to be disclosed. This one
9 brought it current.

10 Q Did the 2001 report include a cost estimate of remediation
11 of \$2.5 million?

12 A It was less at that time.

13 Q Okay. So there is some difference between the two
14 reports, isn't there?

15 A There has been, yes, over time.

16 Q If a potential buyer received the 2001 report, there would
17 be nothing in there to suggest would it cost \$2.5 million to
18 remediate the property; is that right?

19 A If they received the old one?

20 Q Yes.

21 A Correct.

22 Q If the new one didn't exist, they wouldn't see anything
23 that says it would cost \$2.5 million to remediate the
24 property, right?

25 A Based on that, yes.

1 Q Going back to my question, because I don't think you
2 answered it, you understood that it would have to be
3 disclosed to potential buyers, right?

4 A Presumably, yes.

5 Q In fact, you testified to that in your deposition, didn't
6 you?

7 A Okay.

8 Q Let's take a look at Exhibit A-105.

9 THE COURT: Let's save that for after the lunch
10 break. We'll be at recess for an hour and a half. We will
11 see you back at 1:30.

12 (Recessed.)

13 THE COURT: Mr. Pettit, you may proceed.

14 MR. PETTIT: Thank you, Your Honor.

15 Q Good afternoon, Ms. Tamaro. I'd like to start by showing
16 you Exhibit 120.

17 Now, Ms. Tamaro, you talked about this exhibit on your
18 direct examination. This is the letter that you sent on
19 March 14, 2017 exercising the Hidden Hills option or Section
20 7.4J; is that right?

21 A Yes.

22 Q And I'd like to direct your attention to the first page,
23 item 5.

24 A Yes.

25 Q So in your letter you state that the cost of remediating

1 the property's environmental liability fully must be included
2 in the valuation. The appraiser must consider the arsenic
3 contamination of the soil, the cost of remediating the
4 arsenic and the impact of the contamination and remediation
5 cost on market value. Do you see that?

6 A I do.

7 Q So what you were proposing was instructing the appraiser
8 to reduce the value of the property by the amount of the
9 contamination; is that what you were suggesting there?

10 A I was attempting to reach agreement with the limited
11 partner that the value would include this offset for the
12 environmental condition.

13 Q But you wanted the limited partner to agree to instruct
14 its appraiser to reduce any value determination by the cost
15 of the estimated remediation; is that what you were
16 suggesting?

17 A Yes.

18 Q The reason that was important to you is because that would
19 help bring down your option price, right?

20 A I believed, as I said, based on everything that happened
21 when I purchased this property, that the value of the
22 property should be reduced by the cleanup costs. That is how
23 we had purchased this property.

24 Q But why didn't you just let the appraisers figure that
25 out?

1 A In my experience, it had been the bank that drove that
2 requirement. And the appraisers followed.

3 Q Can you clarify what you mean by that?

4 A The lenders dictated that the appraised value would be
5 offset by the cost of remediation. And the appraisers simply
6 followed their instructions. That is how it had been when I
7 bought the property.

8 Q In 2001?

9 A Correct.

10 Q And so why didn't you let the appraisers communicate with
11 the lenders and have the lenders give them whatever
12 information that they needed in order to determine a fair
13 market value?

14 A Well, we didn't have a lender in 2017.

15 Q So there was no lender, but you still wanted to impose
16 requirements that -- the origins of which came from a
17 previous lender; is that right?

18 A The origins of which came from my experience with the
19 purchase in 2001.

20 Q And you said that that experience was that the lender was
21 the one who required this subtraction from the fair market
22 value determination?

23 A Yes.

24 Q And in your letter -- if you could, Chris, if you could
25 jump off of that and go into the second page after the

1 enumerated list there -- you say, "For your information, the
2 managing general partner has already identified CBRE as its
3 appraiser, and is ready to proceed with its appraisal." Do
4 you see that?

5 A I do.

6 Q Had you retained CBRE at this time to perform an appraisal
7 in connection with the exercise of your option?

8 A I don't recall the exact date that I retained them.

9 Q Well, recognizing you don't recall the exact date, do you
10 recall whether it was before or after you sent this letter?

11 A I'm sorry, I don't recall.

12 Q Okay. But you knew that you were going to use CBRE for
13 this, because in January of 2017 they provided an appraisal
14 to you that did, in fact, reduce the fair market value
15 determination by the cost of remediation; is that right?

16 A There's more than one part to your sentence. I did know
17 in January that I would, in all likelihood, be using CBRE as
18 my appraiser, yes.

19 Q That was because you knew that they would reduce the value
20 of the property by the amount of the remediation costs,
21 right?

22 A No. That was because I had just worked with them in the
23 past, and they would be -- I knew they would be the fastest
24 ones to be able to get an appraisal done.

25 Q You worked with them in the past, including in connection

1 with Hidden Hills, right?

2 A Correct.

3 Q In fact, you had them do an appraisal in early 2016 for
4 Hidden Hills, right?

5 A Yes.

6 Q That one did not reduce any amount for contamination,
7 correct?

8 A I believe it did not, correct.

9 Q Then you got another one after you got all the
10 environmental information to CBRE, and that one did reduce
11 the price, right?

12 A Yes.

13 Q It was that experience that you had working with CBRE that
14 made you want to choose them as the appraiser for purposes of
15 exercising your option, correct?

16 A No.

17 Q And I think you already said you don't recall whether you
18 had retained CBRE to perform the option appraisal at this
19 point?

20 A I don't recall when I signed their engagement letter for
21 that appraisal.

22 Q Let's take a look at Exhibit A-116 at page 2.

23 So I want to direct your attention to the last
24 paragraph on this page. Now, that says -- this is a
25 letter -- actually, why don't we go back to the first page,

1 Chris. I'm sorry, I need to establish what this is.

2 Do you see, Ms. Tamaro, that this is a letter from you
3 to Chris Blake dated March 30, 2017?

4 A I do.

5 Q Do you see it says, at the top there, "I received your
6 e-mail of March 23, 2017." And then goes on to discuss some
7 of the back and forth that had been happening about the
8 ground rules for the appraisal; is that right?

9 A Yes.

10 Q Now let's go to page 2. Let's highlight that last
11 paragraph.

12 You write, "The administrative GP has obtained a
13 Phase I environmental site assessment dated 11/3/2016, and a
14 planning-level remediation cost estimate dated January 3,
15 2017, both from Environmental Partners, Inc." Now, that was
16 the first time that you informed the limited partners that
17 Environmental Partners, Inc. had been retained in any
18 capacity; is that right?

19 A I believe so, yes.

20 Q And although you reference the Phase I ESA and the
21 technical memorandum from January of 2017, you don't attach
22 them to this letter, right?

23 A Correct.

24 Q You did not send those to the limited partners at this
25 time?

1 A Not in this communication, no.

2 Q That didn't come until later; is that right?

3 A Correct.

4 Q But you do go on to say, "The cost of soil remediation has
5 increased substantially beyond what was estimated in 2001."
6 What was the basis for that statement?

7 A That would have been the planning-level remediation cost
8 dated 1/3/17.

9 Q That's the technical memorandum?

10 A Correct.

11 Q You go on to say, "It is unclear whether the investor LP
12 intends to withhold material information from its appraiser
13 or to instruct its appraiser to ignore material information.
14 In either case the administrative GP will not agree to an
15 appraisal process in which the appraisers do not take into
16 account the highly material facts of the property's
17 environmental contamination." Do you see that?

18 A I do.

19 Q Was there ever any point in time that the limited partner
20 or any representative of the limited partner told you that
21 they would not provide information to their appraiser?

22 A No.

23 Q Okay.

24 Let's go to Exhibit A-118. So, Ms. Tamaro, Exhibit
25 A-118 is an e-mail exchange between you and Brett Carp of

1 EPI. And the top line e-mail -- let's look at the top two
2 e-mails. Brett Carp sends you an e-mail on April 28, 2017,
3 "Hi Catherine. Just wanted to check in to see how things
4 were progressing for you." And you respond that same day,
5 and you say, "The LP and I are negotiating the buyout terms
6 and are not even close to agreement. Don't close your file
7 yet."

8 Did you consider this to be a negotiation with the
9 limited partner?

10 A Versus what? I'm sorry.

11 Q Well, versus the exercise of a contractual right.

12 A I don't know. I didn't think about it.

13 Q And you say that you're not even close to an agreement.
14 Then you say, "Don't close your file yet" exclamation point.
15 Why didn't you want Mr. Carp to close his file?

16 A Because I didn't know if I would need further services
17 from them. And if they close their file, they have to open
18 their file. And it takes time. And they charge to do it.

19 Q And you thought you might need their services in the
20 future to help you with the negotiations that were ongoing;
21 is that right?

22 A At that time I wasn't sure.

23 Q So you wanted to keep your options open and instructed EPI
24 not to close their file; is that right?

25 A Correct.

1 Q Okay. Let's go to Exhibit A-122.

2 So, Exhibit A-122 is an e-mail from Christopher Blake
3 to you dated May 11, 2017. And it -- if you could blow up
4 the text of the e-mail. That's fine. Mr. Blake writes,
5 "Hi Catherine. Following up on our letter from last week,
6 the limited partner's appraisal is attached. Based on your
7 prior concerns, I want to specifically emphasize that the
8 appraiser, who is familiar with the Tacoma Smelter Plume, was
9 deliberately alerted to the property's soil contamination,
10 and provided with all environmental and soil cleanup
11 documents in our possession. Please forward a copy of the
12 managing general partner's appraisal promptly upon receipt."
13 Do you see that?

14 A I do.

15 Q Mr. Blake's e-mail attached a copy of the Hidden Hills
16 appraisal performed by Cushman & Wakefield, correct?

17 A Correct.

18 Q That appraisal was dated May 10, 2017; is that right?

19 A Correct.

20 Q So within one day he sent that over to you, right?

21 A Yes.

22 Q And the value determination by Cushman & Wakefield was
23 \$19.7 million; is that right?

24 A Yes.

25 Q All right. And at the time that you received this, had

1 you retained CBRE to perform an appraisal in connection with
2 the exercise of your option?

3 A I do not recall specifically what the date was.

4 Q Okay. Well, let's take a look at Exhibit A-124. That
5 might help refresh your recollection.

6 So, if you go -- start at the e-mail at the bottom.
7 There's an e-mail May 11, 2017, which is the same day you got
8 the appraisal from Alden Torch, and you write, "Hi, Todd.
9 Could you do an update on the Hidden Hills appraisal as of
10 March 31, 2017? I exercised my option to purchase on
11 March 13, 2017, but I neglected to run a rent roll on that
12 date, so I guess the appraisal should be dated March 31st."
13 Do you see that?

14 A Yes.

15 Q Does that refresh your recollection as to when you
16 retained Mr. Henderson at CBRE to perform an appraisal in
17 connection with your option?

18 A Yes.

19 Q And was it May 11, 2017, or thereabouts?

20 A Yes.

21 Q And you say, "Could you do an update on the Hidden Hills
22 appraisal?" What did you mean by that?

23 A Well, he already has much of the data. So he's not
24 starting from scratch.

25 Q Okay. So you didn't want him to start from scratch, you

1 wanted him to use what he had used before and then do an
2 update on that; is that right?

3 A Well, he would have had -- he would have had prior
4 information relevant to the property. So he didn't -- we
5 didn't need to recreate that.

6 Q Okay.

7 Let's look at Exhibit A-125. Now, this is an e-mail
8 exchange that you had with Timothy Flint. And who is Timothy
9 Flint?

10 A He is a broker at CBRE.

11 Q And if we go to the second page of this document, you can
12 see there's an e-mail from you, and it says, "Tim, I am the
13 general partner of the Hidden Hills Apartments in University
14 Place. The property has completed its 15-year initial LITHC
15 compliance and I am working to buy out the limited partner's
16 interest. I'm not sure yet if I will be selling or not.
17 Would your firm be able to produce a broker opinion of value
18 for the property? And if so, what information do you need
19 from me?" Do you see that?

20 A Yes.

21 Q At that time you were considering possibly selling the
22 property?

23 A Well, I wasn't sure if I would be selling it or not.

24 Q Mr. Flint responds the same day -- and we're now on the
25 first page of Exhibit A-125 -- and he writes, "Yes, would be

1 more than happy to provide a valuation for you." Then it has
2 some other information that he'll need in order to prepare,
3 some information about timing.

4 If you click out of that, you look at -- you say, "The
5 timing is fine. Thanks for responding."

6 Then you send him another e-mail on May 11th. And it
7 says, "Tim, when you have a chance, I would like to have a
8 conversation, because this property has environmental issues
9 from the Tacoma Plume." Do you see that?

10 A I do.

11 Q Why did you want to discuss that with Mr. Flint?

12 A For exactly the reason it states, because this property
13 had this particular condition, that was unique to it.

14 Q Why was that of significance to you?

15 A Based on my experience purchasing the property, it was
16 very significant.

17 Q And you wanted to make sure Mr. Flint incorporated that in
18 the work that he performed?

19 A I wanted to make sure that he understood that, yes.

20 Q And did you talk to Mr. Flint about the environmental
21 condition of the property?

22 A I believe I did.

23 Q Now, you didn't tell the limited partner that you had
24 reached out to Tim Flint at CBRE to perform a broker's
25 opinion of value; is that right?

1 A Mr. Flint was very clear that, A, he knew Chris Blake;
2 and, B, all of the partners would receive that information.
3 He was extremely clear about that.

4 Q So is the answer to my question, no?

5 A I did not directly inform Chris Blake, because I
6 understood from Tim Flint that he would inform Mr. Blake.

7 Q Okay. So if Tim Flint hadn't said that, you would have
8 called up Mr. Blake and told him what you had done?

9 A I don't know.

10 Q Let's take a look at Exhibit A-130. The top line e-mail
11 is an e-mail from Andy Noble to Kori Gibbs at Alden Torch
12 saying, "Hi Kori. Forwarding my exchange with Catherine
13 Tamaro, just in case it comes up." Do you see that?

14 A I do.

15 Q Do you recall having an e-mail exchange with Andy Noble in
16 May 2017 regarding his appraisal of the Hidden Hills project?

17 A I had looked at a couple of expense items that were
18 actually unrelated to the environmental, and I had some
19 questions about them.

20 Q Let's go to the next page of the exhibit. Let's go to the
21 page after that. Are these the issues that you were
22 referring to?

23 And can you blow that up, Chris, so she can see it
24 better?

25 A Yes, those are the issues.

1 Q Was it your position that Mr. Noble had not properly taken
2 these issues into account in formulating his opinion -- his
3 appraisal?

4 A When I read his appraisal, I did not see these items in
5 his list of expenses.

6 Q And these items, if they were taken into account, the
7 effect would be to bring the appraised value lower; is that
8 right?

9 A If he had left out some pertinent fees, then his appraisal
10 would be higher.

11 Q By incorporating them, that would bring the appraisal
12 down?

13 A That would bring the appraisal down, yes.

14 Q That's what you were advocating for, right?

15 A I did not see those fees in his appraisal.

16 Q And you were --

17 A He did, in fact, respond that, yes, they were in there,
18 they were in a different section.

19 Q But you reached out to him because you didn't see them
20 there and you thought they should be there, right?

21 A Correct.

22 Q Did you inform the limited partner that you would be --
23 that you intended to reach out to Mr. Noble, before you
24 contacted him?

25 A I don't believe I did.

1 Q So let's take a look at Exhibit A-132. Exhibit A-132 is
2 the CBRE appraisal from June of 2017. If we go to the next
3 page, do you see that's June 7, 2017? That's the appraisal
4 that you commissioned in connection with the exercise of your
5 option?

6 A I do.

7 Q And this is the third appraisal that you had gotten from
8 CBRE for the Hidden Hills project, since February of 2016,
9 right?

10 A Yes.

11 Q Let's take a look at Exhibit A-133. Exhibit A-133 is an
12 e-mail from Mr. Blake, to you, and he writes, "I was notified
13 that you contacted the LP's appraiser questioning several
14 assumptions that were clearly explained in his appraisal.
15 Please do not contact the LP's appraiser without Alden
16 Torch's prior approval. We've instructed the appraiser to
17 ignore further inquiries from the GP intended to influence
18 his valuation. When can we expect to receive the GP's
19 appraisal?" Do you see that?

20 A Yes.

21 Q The day you received the appraisal, Mr. Blake was asking
22 for it. Do you recognize that?

23 A Yes.

24 Q Did you give it to him on that day?

25 A I don't recall.

1 Q Do you recall when you gave it to him?

2 A Not precisely, no.

3 Q Do you know if it was that week?

4 A Not precisely.

5 Q Is there a reason why you didn't give it to him right
6 away, if you had it and he had asked for it?

7 A Not that I recall.

8 Q You can't think of any reason why that would be the case?

9 A I just don't remember.

10 Q Let's take a look at Exhibit A-134. That's the broker's
11 opinion of value that was prepared by CBRE and issued the
12 next day, June 8, 2017. Do you see that?

13 A I do.

14 Q Okay. Now, let's -- do you recall that the value
15 determination that CBRE arrived at in this report was in a
16 range between \$20.8 million and \$21.8 million for the
17 property?

18 A I do.

19 Q Did you provide -- I think you've already testified you
20 did not provide this to the limited partner, correct?

21 A I was told that Mr. Flint would be passing along this
22 information.

23 Q Did you ever call Chris Blake to make sure that he had
24 received what Mr. Flint said he was going to pass along?

25 A No.

1 Q Let's take a look at Exhibit A-135. This is an e-mail
2 from Mr. Carp to you saying -- dated June 14, 2017. So this
3 is one week after you have received the CBRE appraisal. And
4 he writes to you, "Thank you for your call today. I'm
5 working on a scope to tighten down the remediation cost
6 estimate."

7 Ms. Tamaro, do you know why he was working on a scope
8 to tighten down the remediation cost estimate?

9 A I think I had asked him to do exactly that, which is
10 tighten down the remediation cost estimate.

11 Q So you had asked him to prepare an updated remediation
12 cost estimate; is that right?

13 A He had prepared an updated remediation cost estimate with
14 a range. And in 2001 I had worked with a single number. So
15 to me it was logical to ask Mr. Carp to get it down to a
16 single number.

17 Q When you received his report, the initial technical
18 memorandum in January of 2017, did you ever tell him that
19 this is not what I was looking for, because it gives me a
20 range instead of a single number?

21 A When he did the report initially he asked -- getting to a
22 single number took additional work and effort from him. And
23 so in the beginning he asked, was a range acceptable. And at
24 that time I said yes.

25 Q Okay. And the additional work would be for -- I think

1 what he referred to earlier in his e-mail -- for a
2 planning-level cost estimate; is that right?

3 A I believe so.

4 Q And that's what you were retaining him to do now?

5 A He called it a planning-level estimate. In my mind I was
6 asking for a single number, because that is what I had worked
7 with previously.

8 Q Okay. Is there any reason why you just didn't take the
9 low-end number that he had provided as a conservative way of
10 saying this is an adequate number to use?

11 A I didn't know if the low end or the high end would be the
12 correct number. So I asked him to get to a single number.

13 Q Did you have any idea that it would be outside of the
14 range between the low end and the high end.

15 A I did not, actually.

16 Q But it was, correct?

17 A It did turn out to be, yes.

18 Q Significantly higher than the high end, right?

19 A It was.

20 Q Now, notwithstanding the fact that you e-mailed Mr. Carp
21 on June 14, 2017 and asked for an updated remediation
22 estimate, it's true, isn't it -- Ms. Tamaro, that you never
23 intended to remediate this property, correct?

24 A Well, as they say, "Never say never." I wouldn't
25 categorically say "never."

1 Q Do you recall testifying in your deposition that you
2 thought that Mr. Carp had made a misstatement regarding the
3 possibility that you might remediate because that's not
4 something that you would ever say?

5 A I didn't intend to remediate it. I don't intend now. I
6 can't categorically say never. That's a different scope of
7 time.

8 Q Well, let's play your video deposition, and we'll find out
9 precisely what you said there. It's at pages 439, line 4,
10 through 440, line 23.

11 (Video clip played.)

12 Q So does that refresh your recollection as to what your
13 mindset was?

14 A Yes.

15 Q Let's take a look at Exhibit A-140. Exhibit A-140 is a
16 letter dated June 19, 2017, from you to Mr. Blake, and it
17 says, "Dear Chris, enclosed is a copy of CBRE's fair market
18 value appraisal of Hidden Hills Apartments." Do you see
19 that?

20 A Yes.

21 Q You waited until June 19th to send the appraisal over to
22 Mr. Blake; is that right?

23 A Yes.

24 Q Was there a reason for that?

25 A I do not recall.

1 Q Was it because you wanted to talk to EPI before you sent
2 the appraisal over to the limited partner and you weren't
3 able to do that until June 14th?

4 A I just don't recall.

5 Q In the first paragraph of the letter, the last sentence of
6 that paragraph says, "Also enclosed is a copy of a Phase I
7 environmental site assessment dated November 3, 2016,
8 describing environmental conditions at the property." Do you
9 see that?

10 A I do.

11 Q So this June 19, 2017 letter was the first time that you
12 had provided a copy of the Phase I ESA to the limited
13 partners; is that right?

14 A Yes.

15 Q But you didn't provide a copy of the January 2017
16 technical memorandum as part of this letter, did you?

17 A No.

18 Q And that's the document that actually included an estimate
19 for cost remediation, right?

20 A Yes.

21 Q That was not included in the Phase I ESA, right?

22 A Correct.

23 Q I want to look at the second-to-last paragraph of this
24 letter that starts with "Cushman & Wakefield."

25 You write, "Cushman & Wakefield's appraisal of Hidden

1 Hills Apartments, commissioned by Alden Torch on behalf of
2 the limited partner, includes no mention of the property's
3 contaminated soil, nor any reference to the many
4 environmental consultant reports that have been generated
5 since 1999.

6 "In my letter dated March 30, 2017, I disclosed to you
7 that I had commissioned an updated Phase I environmental site
8 assessment in 2016; you did not request a copy of this
9 document and presumably you did not disclose its existence to
10 Cushman & Wakefield."

11 Do you see that?

12 A Yes.

13 Q So you were criticizing the limited partner for not
14 providing its appraiser with a document that you had not
15 provided to the limited partner?

16 A Yes.

17 Q Let's take a look at Exhibit A-146.

18 Exhibit A-146, Ms. Tamaro, is an e-mail -- a lengthy
19 e-mail from you to Todd Henderson. And the subject is "Short
20 summary of the arsenic at Hidden Hills." Do you see that?

21 A Yes.

22 Q And the top of the e-mail says, "Hi Todd. To assist when
23 you talk to Andy Noble, I have written a short version of the
24 history of the soil contamination at Hidden Hills." Do you
25 see that?

1 A Yes.

2 Q You go on to say, in that same paragraph, "I would like
3 both you and Andy Noble to have these figures before you try
4 to reach agreement on a fair market value, so don't worry
5 about contacting Andy yet. As soon as I have the updated
6 cost figures, I will pass them on to you." Do you see that?

7 A Yes.

8 Q Why was it so important to you to have Mr. Henderson get
9 these updated cost memos and then share them with Mr. Noble?

10 A So that they both had this information.

11 Q Was it because you wanted them to reduce the appraised
12 value of the Hidden Hills property by the amount of the
13 remediation?

14 A It had been my experience that that's how the property was
15 appraised. That's how it was appraised when I purchased it.

16 Q And you thought that your experience was superior to that
17 of professional appraisers in assessing environmental
18 condition on the property?

19 A I was -- I had had a certain experience in purchasing that
20 property, in that the appraisal -- the bank instructed the
21 appraiser on how to do it. The bank thought that that was
22 relevant. That was how I had seen it handled.

23 Q Under Section 7.4J, no one is supposed to be instructing
24 the appraisers how to do their job; is that right?

25 A Yes.

1 Q Let's take a look at Exhibit A-154.

2 This is a letter from you to Mr. Blake dated July 17,
3 2017. Your first paragraph says: "This letter is to
4 acknowledge receipt of your e-mail of June 28, 2017," and
5 expresses no interest in selling the property. It points out
6 that the investor limited partner cannot compel a sale. Then
7 you go on to say, "Environmental Partners, Inc. of Issaquah,
8 Washington is obtaining cost figures from an excavation
9 contractor in order to complete a remediation plan, with
10 accurate pricing. Environmental Partners' planning-level
11 remediation cost estimate completed in January 2017 stated
12 that the estimated cost to obtain a no-further-action letter
13 from the Department of Ecology would be \$1.5 million to
14 \$2.5 million, which, after accounting for inflation, is in
15 the same range as the 2001 cost estimate of \$1.5 million."
16 Do you see that?

17 A Yes.

18 Q And so at this point -- this is the first time that you've
19 referenced the existence of the January 2017 technical
20 memorandum, right, to the limited partner?

21 A I guess so.

22 Q And you didn't enclose a copy of the January 2017
23 technical memorandum with this letter, did you?

24 A No.

25 Q Can you close out of that blowup? Can you blow up the

1 last paragraph, please?

2 The last paragraph says, "Once Environmental Partners,
3 Inc. receives a response from DOE, it can complete its cost
4 figures. I will forward that information to you and CBRE.
5 At that point the appraisers from CBRE and Cushman &
6 Wakefield can, in accordance with Section 7.4J of the
7 partnership agreement, attempt to agree on the fair market
8 value of Hidden Hills Apartments." Correct? Do you see
9 that?

10 A Yes.

11 Q And you wrote that, right?

12 A Yes.

13 Q Did you ever forward the second technical memorandum from
14 Environmental Partners to the limited partner?

15 A I don't believe so. But I'm not certain.

16 Q Well, why don't we play a clip from your deposition that
17 will hopefully answer that question or refresh your
18 recollection. It's pages 471, line 6, through 472, line 1.

19 (Video clip played.)

20 Q Let's take a look at Exhibit A-155.

21 So, this is an e-mail, Ms. Tamaro, from Chris Blake to
22 you dated July 18, 2017. Do you see that?

23 A I do.

24 Q So that's the day after you sent your letter, correct,
25 that we just looked at?

1 A Yes.

2 Q So he says, "You received a copy of the limited partner's
3 appraisal on May 11, 2017." This is Exhibit A-155. "The
4 general partner's appraisal was completed more than a month
5 ago, on June 7, 2017, and the appraisal you obtained from
6 CBRE was delivered the following day, on June 8, 2017." And
7 then he says, "For the reasons laid out in my previous e-mail
8 from three weeks ago, I believe it is in all of the partners'
9 best interests to list the property with CBRE. If the GP is
10 not willing to market the property, a third appraiser needs
11 to be selected immediately, as it is apparent that our
12 appraisers do not agree on value. Please let me know how you
13 would like to proceed by close of business July 21st." Do
14 you see that?

15 A Yes.

16 Q He goes on to say, "If you intend to continue the
17 appraisal process under the GP's option, please consult with
18 CBRE and provide the names of five appraisers in your
19 response. Rather, if you prefer that Cushman & Wakefield
20 identify five appraisers, we will deliver a list of
21 appraisers to you and CBRE by the end of the week. In either
22 case, prior to engaging the final appraiser, I think it is
23 necessary for us to have a conversation about what
24 information will be shared with the third appraiser, and
25 rules for communicating with that appraiser. I will set up a

1 conference call as soon as the third appraiser is selected.
2 I look forward to your prompt response."

3 Do you see that?

4 A Yes.

5 Q So the limited partner at this point is indicating a
6 willingness to go along with the selection of a third
7 appraiser, correct?

8 A Yes.

9 Q And has affirmatively asked you to communicate with them
10 and coordinate with them in connection with the selection of
11 the third appraiser, correct?

12 A Yes.

13 Q But you didn't do that, did you?

14 A I did not.

15 Q Let's take a look at Exhibit A-162. This is a letter from
16 me to you. And it's dated August 2, 2017. Do you recall
17 receiving this letter?

18 A Yes.

19 Q And I want to direct your attention specifically -- I'll
20 get past all the lawyer speak and -- give me one moment -- so
21 if you look at the third page of the letter, the last two
22 paragraphs, I write, "In conclusion, to the extent the
23 managing general partner has concerns about the appraisal
24 process, the solution is not to modify that process
25 unilaterally, but instead to agree to market the property for

1 sale. Indeed, listing the property for sale and entertaining
2 actual third-party offers, surely is the most accurate and
3 transparent way to determine fair market value, and the
4 investor limited partner would be willing to give the
5 managing general partner a right of first refusal to purchase
6 the property at the price determined by this bidding
7 process."

8 Do you see that?

9 A Yes.

10 Q It goes on to say, "Please let us know if you are
11 interested in marketing the property for sale in order to
12 determine its fair value. If not, we demand that you
13 participate in the appraisal process set forth in Section
14 7.4J, by working with the investor limited partner to select
15 a third appraiser on or before August 16th, and reserve the
16 right to take legal action based on your continuing breaches
17 of the partnership agreement."

18 Do you see that?

19 A Yes.

20 Q So, at this point the limited partner is offering to sell
21 you the property at fair market value, correct?

22 A That's not quite right. They're asking to put the
23 property on the market.

24 Q Right.

25 A Yes.

1 Q In order to determine its fair market value, right?

2 A To sell the property.

3 Q Well, was it to sell the property, or is it, instead, as I
4 wrote in my letter, the most accurate and transparent way to
5 determine fair market value that we would then be willing to
6 give you a right of first refusal to purchase the property at
7 that price? Is there some reason why that seemed unfair to
8 you?

9 A I'm not sure how to answer that.

10 Q Well, was it unfair -- did you accept this proposal? Let
11 me ask you that.

12 A To put it on the market? No, I did not.

13 Q And accept the right of first refusal to purchase?

14 A At this time we didn't do anything. But I have not
15 accepted this proposal.

16 Q You never accepted this proposal. And the reason why you
17 didn't is because marketing the property would prevent you
18 from having any influence on what the ultimate value
19 determination is; isn't that right?

20 A No.

21 Q Let's take a look at Exhibit A-170.

22 Exhibit A-170 is a letter dated August 11, 2017 from
23 Joseph McCarthy at Stoel Rives. And it's addressed to me.
24 Have you seen a copy of this letter before?

25 A Yes.

1 Q All right.

2 I'd like to direct your attention to -- let's go to the
3 next page. Next page. Okay. Let's look at that large
4 paragraph there in the middle of the page.

5 So, this is a letter from your lawyer to me on
6 August 11, 2017. And you write -- and I'm looking at the
7 third sentence here. Excuse me, I'm looking at -- let's
8 start at the top.

9 "Ms. Tamaro hoped that the appraisal process would be
10 sound and meaningful. Alden Torch's demand that the
11 appraisers not receive information about the hazardous
12 materials and not consider the impact of those materials on
13 value, suggests that the process will not work well. As a
14 result, Ms. Tamaro is giving serious consideration to your
15 request that the partnership market the property. If Alden
16 Torch honestly wants to know the market value, disclosure and
17 marketing will tell us." Do you see that?

18 A I do.

19 Q And did you authorize your counsel to include that in the
20 letter that he sent to me?

21 A Yes.

22 Q And then there are additional conditions that he places
23 about the need to comply with disclosure, and the condition
24 which we had proposed that you get a right to purchase the
25 property at the final price. And then there are additional

1 conditions. Do you see that?

2 A Yes.

3 Q So your lawyer was suggesting that we go down this road
4 and explore the possibility of marketing the property in
5 order to determine its fair market value, as an alternative
6 to the appraisal process, right?

7 A My lawyer and I discussed a sale. And although I really
8 didn't want to sell, I agreed I would consider this proposal.

9 Q Do you recall testifying at your deposition that you were
10 genuinely interested in selling the property at the time
11 counsel sent his letter?

12 A I don't recall that.

13 Q Let's play page 489, at lines 20 through 23.

14 (Video clip played.)

15 Q And I believe I misspoke there. You said that you were
16 giving serious consideration to it; is that right?

17 A Yes.

18 Q Was that a true statement?

19 A Yes.

20 Q Well, let's take a look at Exhibit A-152.

21 Exhibit A-152 is notes from a call that you had with
22 Tim Flint on July 11, 2017. Do you see that?

23 A Yes.

24 Q Tim Flint is the person from CBRE who performed the broker
25 opinion of value at your request, correct?

1 A Yes.

2 Q Let's go to the second page. The last paragraph there
3 says, "I told Tim that I would not agree to a sale until
4 Alden Torch was out of the partnership, because if we sell
5 now, Alden Torch gets all the money. I said Alden Torch
6 cannot force a sale right now, and I would only consider a
7 sale after Alden Torch is out." Do you see that?

8 A Yes.

9 Q Were you telling Mr. Flint the truth there?

10 A Well, I did write that down.

11 Q Okay. So you weren't giving serious consideration to
12 selling the property, were you?

13 A Well, this was dated in June, and then your letter was
14 subsequent to that.

15 Q This letter was in July -- sorry. This is not a letter,
16 this is --

17 A These are notes to my file --

18 Q Right.

19 A -- recounting my experience with Tim Flint in June. And
20 then your proposal was in, I believe, August, right?

21 Q So your testimony is that -- let's go back to the first
22 page of this document.

23 So first of all, at the top, what's the date there?

24 A That is July of 2017.

25 Q So not June. July?

1 A Yes.

2 Q And I think the date of my letter was August 2nd. So
3 about three weeks later?

4 A Yes.

5 Q So is it your testimony that over the course of those
6 three weeks you went from a position that you would
7 unequivocally not sell the property while Alden Torch
8 remained as a partner, to giving serious consideration to
9 Alden Torch's proposal to list and sell the property?

10 A No.

11 Q Now, at the time that Mr. McCarthy sent his letter on
12 August 11, 2017, saying that you were seriously -- you were
13 giving serious consideration to selling the property, you had
14 already received the technical memorandum, the second
15 technical memorandum from EPI, correct?

16 A Yes.

17 Q Let's pull up Exhibit A-169. And that's dated August 8,
18 2017, correct?

19 A Yes.

20 Q And so that was three days before Mr. McCarthy sent his
21 letter, correct?

22 A Yes.

23 Q But Mr. McCarthy's letter did not include a copy of the
24 August 2017 technical memorandum, did it?

25 A No.

1 Q In fact, that's true, despite the fact that you had
2 previously told Chris Blake that you would be providing that
3 report, correct?

4 A I'm sorry, what's the question?

5 Q You didn't provide that report, through your counsel,
6 notwithstanding the fact that you previously told the limited
7 partner that you would be providing that report, correct?

8 A Counsel did not provide it.

9 Q And neither did you, correct?

10 A Correct.

11 Q So, instead of providing a copy of the environmental
12 report or following up with the limited partner about the
13 suggestion that they sell, your decision was to -- without
14 disclosing to the limited partner -- reach out to the two
15 appraisers and have them recommend to you a third appraiser;
16 is that right?

17 A I did do that.

18 Q You didn't tell the limited partner that's what you were
19 doing, correct?

20 A Well, we were communicating through counsel.

21 Q Did your counsel tell the limited partner that's what you
22 were doing?

23 A I don't believe so.

24 Q I don't believe so either.

25 And did you instruct your counsel not to provide

1 information to the limited partner relating to your reaching
2 out to these appraisers?

3 A I don't recall doing that.

4 Q You knew, from Chris Blake's e-mail in July of 2017, and
5 my letter from August of 2017, that the limited partner had
6 concerns about your attempts to influence the appraisal
7 process, correct?

8 A There was a great deal of disagreement on how to get that
9 property appraised.

10 Q They had concerns about what they believed were efforts by
11 you to influence the process, correct?

12 A They may have.

13 Q They told you that they did, didn't they?

14 A They did.

15 Q They told you that because they did, it was important to
16 them that you coordinate with them in connection with the
17 selection of the third appraiser, right?

18 A They did say that.

19 Q But you chose not to do that, correct?

20 A We were communicating through counsel at this time.

21 Q And you chose not to tell your counsel to communicate
22 that, correct?

23 A No.

24 Q So it's your counsel's fault that didn't get communicated?

25 A I think you'd have to ask counsel.

1 Q So let's take a look at the September 6, 2017 e-mail,
2 which is Exhibit A-172. And this is an e-mail from Todd
3 Henderson to you, Ms. Tamaro, and copying Andy Noble. Do you
4 see that?

5 A Yes.

6 Q Dated September 6, 2017, correct?

7 A Yes.

8 Q And it says, "Catherine, Andy and I discussed the
9 appraisers we would recommend for Hidden Hills. Both names
10 and contact information are below and are taken from the
11 Appraisal Institute's website. Please let Andy or I know if
12 you need anything further from either of us." Do you see
13 that?

14 A Yes.

15 Q Did you forward this e-mail to the limited partner and ask
16 that you coordinate on selecting one of these two potential
17 appraisers?

18 A No. We were communicating through counsel.

19 Q Ms. Tamaro, my question just asks for a yes or no answer.
20 Did you do that?

21 A I was not communicating with the limited partner at this
22 point.

23 Q So your answer was no, you did not do that?

24 A I did not, no.

25 Q And Mr. Henderson's e-mail specifically says, "Please let

1 Andy or I know if you need anything further from either of
2 us." Did you contact Mr. Henderson and say: Well, gee whiz,
3 Todd, this agreement requires you to pick one appraiser and
4 you have given me two here. So you guys have to get back and
5 tell me which one of these two you are appointing. Did you
6 do that?

7 A No.

8 Q No. Instead you took it upon yourself to reach out to
9 Colliers and engage them to perform the third appraisal,
10 without telling the limited partner, correct?

11 A I did not notify the limited partner.

12 Q Let's take a look at -- give me one second.

13 Let's take a look at Exhibit A-183. This is an e-mail
14 dated September 13, 2017. So it's one week after you
15 received the names of the two potential appraisers from
16 Mr. Henderson, correct?

17 A Yes.

18 Q And on September 11, 2017, Mr. Carp from EPI reached out
19 to you and said, "Hi Catherine. Just wanted to check in to
20 see how things are progressing for you. I trust all is
21 well."

22 And you responded on September 13, 2017, and you wrote,
23 "Hi Brett. The LP and I decided to get one more appraisal
24 done on the property, so we are waiting for the results. I
25 appreciate having the new cleanup estimate because it makes

1 it easier to value the property." Do you see that?

2 A Yes.

3 Q Now, the first sentence of your e-mail was a false
4 statement, correct?

5 A Yes.

6 Q Did you ever correct that statement? Did you ever inform
7 Mr. Carp that, as a matter of fact, you had not agreed with
8 the limited partner to get a third appraisal, but instead you
9 were going behind the limited partner's back to get that
10 appraisal without their knowledge?

11 A I did not correct that statement.

12 Q Let's take a look at Exhibit A-184. And this is an e-mail
13 exchange between you and the appraisers from Colliers, also
14 dated September 13, 2017. Do you see that?

15 A Um-hum.

16 Q And at the top of this exhibit is an e-mail from you where
17 you say, "Hi John and Cory." And John is John Campbell and
18 Cory is Cory Hutsell; is that right?

19 A Yes.

20 Q And those are both appraisers at Colliers?

21 A Yes.

22 Q And they performed the Colliers appraisal at issue in this
23 action, correct?

24 A Yes.

25 Q You wrote, "Hi John and Cory. I realized you've just

1 gotten started on this property, but I was wondering if we
2 could set a date for your inspection? I'd like to meet you
3 there to talk about the environmental issue. I teach at UW,
4 and school is starting in a couple weeks, so I'm trying to
5 set my schedule."

6 So, first of all, why did you want to meet Mr. Hutsell
7 and Mr. Campbell at the property in order to discuss the
8 environmental issue?

9 A So that they could see the property.

10 Q Did they need you there in order to see the property?

11 A It's easier if I'm there.

12 Q But that's not the reason that you gave in your e-mail for
13 why you wanted to meet them there, right?

14 A I said, "I'd like to meet you there to talk about the
15 environmental issue."

16 Q You didn't say: I'd like to meet you there because it
17 will be easier for you to walk the property if I'm there,
18 right?

19 A No. You asked me why I would meet them there and I gave
20 that answer.

21 Q Okay. So when you said in your e-mail, "I'd like to meet
22 you there to talk about the environmental issue," that wasn't
23 truthful?

24 A I'm sorry, what is your question?

25 Q My question is whether you invited them to the property

1 because you wanted to talk to them about the environmental
2 issue.

3 A Yes.

4 Q Okay. And you wanted to talk to them about that,
5 notwithstanding the fact that you had already provided all of
6 the environmental reporting, including the most recent
7 technical memorandum from EPI, correct?

8 A Yes.

9 Q You wanted to make sure that notwithstanding the fact that
10 they had all that information, you wanted to give them your
11 color and your interpretation of what that information said,
12 right?

13 A I wanted to show them the property.

14 Q You wanted to talk about the environmental issue. That's
15 what you wrote, correct?

16 A Yes.

17 Q Then you go on to say, "I teach at UW, and school is
18 starting in a couple of weeks, so I'm trying to set my
19 schedule."

20 A Yes.

21 Q Now, you testified -- I asked you specifically at the
22 beginning of your examination whether you had taught before,
23 and you said no. And I asked -- we asked at your deposition
24 if you had taught at the university level before, and you
25 said no. Why were you telling him that you teach at UW?

1 A I assist my advisor with her seminar. And that is what I
2 was referring to here. I am not an appointed instructor at
3 the University of Washington.

4 Q But you didn't want to make that clarification when I
5 asked you if you taught at the university?

6 A You just asked if I teach there. I'm not an appointed
7 teacher there.

8 Q So when you say on your e-mail, "I teach at UW," that's a
9 false statement?

10 A I am not an appointed instructor at the University of
11 Washington.

12 Q Now, isn't it true, Ms. Tamaro, that you did not inform --
13 and, in fact, neither you nor your counsel informed the
14 limited partner, or its counsel, that you had hired Colliers,
15 until September 22, 2017?

16 A If that is the date when my counsel notified them, then
17 that would be correct.

18 Q Do you recall at the beginning of the examination I asked
19 you about providing a declaration to the Court, when this
20 case was still in state court, in support of a motion for a
21 preliminary injunction?

22 A Yes.

23 Q Do you remember that?

24 A Yes.

25 Q And we took a look at that this morning?

1 A Yes.

2 Q I'd like to direct your attention to -- and we're going to
3 put this up on the screen -- the declaration at pages 5 and
4 6. It's actually paragraph 18.

5 Paragraph 18 says, "I provided Colliers with the same
6 documentation and information that I previously provided to
7 CBRE. On September 22, 2017, HHM informed AMTAX's counsel
8 that HHM had retained Colliers to conduct the third appraisal
9 and provided AMTAX with Colliers' contact information." Do
10 you see that?

11 A Yes.

12 Q And you gave this statement under oath, correct?

13 A Yes.

14 Q And so presumably this is a truthful statement that the
15 first time you disclosed the existence of the third appraiser
16 was September 22, 2017?

17 A Presumably.

18 Q So you waited more than two weeks, even though you knew
19 that the parties were discussing marketing the property as an
20 alternative to appraisal, and further knew that the limited
21 partners were concerned you would manipulate the process; is
22 that right?

23 A I'm sorry, repeat that.

24 Q So you waited more than two weeks, even though you knew
25 that the parties were discussing marketing the property as an

1 alternative to getting a third appraisal, and even though you
2 also knew that the limited partners were concerned that you
3 were manipulating the process?

4 A We were communicating through counsel.

5 Q Let's take a look at Exhibit A-204. Now, this is a draft
6 of the Colliers appraisal that was ultimately issued on
7 Hidden Hills. Do you see that?

8 A Yes.

9 Q Okay. Let's go to the second page of that. And the value
10 determination there is \$16,510,000. Do you see that?

11 A Yes.

12 Q So in the draft that Colliers sent to you, the proposed
13 value or the value determination they made was a little over
14 \$16.5 million; is that right?

15 A Yes.

16 Q Let's go to the third page of this document. And let's go
17 down to the extraordinary assumptions. And I want to
18 specifically direct your attention to the third paragraph
19 there.

20 "The costs to remediate the contaminated soil are
21 estimated at \$3,760,450, and based on the technical
22 memorandum provided by Environmental Partners. Also the
23 report's findings would not have been different if the report
24 was published in March, 2017." Do you see that?

25 A Yes.

1 Q So at the time of this draft report, they had already
2 reduced the value by the \$3.76 million amount that was
3 reflected in the second technical memorandum. Correct?

4 A Yes.

5 Q And so that \$16 million is already discounted, based on
6 environmental contamination, right?

7 A I believe so.

8 Q So let's take a look now at A-205.

9 A-205, if we scroll down -- or if you go to the next
10 page.

11 So the bottom e-mail there is from Cory Hutsell to you.
12 And it says, "Catherine, please find the attached invoice and
13 draft report for Hidden Hills." Do you see that?

14 A I do.

15 Q And so you had an opportunity to review a draft of the
16 Colliers report before it was finalized; is that right?

17 A Yes.

18 Q At the time that you received a draft of the report, did
19 you, or did you instruct your counsel to forward it along to
20 the limited partner so that they would have the same
21 opportunity to comment?

22 A I don't believe so.

23 Q Okay. I don't want to go through all of your comments
24 here because I don't want to take up additional time. Let's
25 go back to the first page. But you have a number of comments

1 here regarding the appraisal -- or the draft appraisal that
2 Colliers had performed, correct?

3 A Yes.

4 Q And you sent these -- you see the e-mail -- you sent these
5 along to Cory and John at Colliers on October 19, 2017.
6 Correct?

7 A Yes.

8 Q Let's take a look, now, at A-210, which is the final
9 Colliers appraisal. Let's go to page 2 there.

10 And if you look at the value there on the October 23,
11 2017 final determination of value on the final appraisal,
12 it's \$3 million lower. Do you see that?

13 A I do.

14 Q And that was because of suggestions or issues that you
15 raised in your comments on October 19th, correct?

16 A In my comments, Cory Hutsell -- Hidden Hills has two
17 different regulatory agreements and a somewhat complex
18 set-aside structure for its low-income units --

19 Q Ms. Tamaro, I'm just asking you whether this reduction was
20 made because of a suggestion you made?

21 A Yes. And Cory Hutsell had not understood the second
22 regulatory agreement from the Pierce County Housing
23 Authority. And I was clarifying for him how the second
24 regulatory agreement worked.

25 When he incorporated that information into his model, it

1 resulted in this different value.

2 Q Okay. So after you educated him on why his price was too
3 high, he brought it down another \$3 million; is that right?

4 A I educated him on how the second regulatory agreement
5 worked, under the Revised Code of Washington.

6 Q Did you give the limited partner an opportunity to weigh
7 in on whether your interpretation of that issue was accurate?

8 A No. I was confident in my interpretation of that
9 information.

10 Q So you provided a copy of the final Colliers appraisal to
11 the limited partner, correct?

12 A Someone did.

13 Q And you took the position that this was the final and
14 binding appraisal, for the purposes of 7.4J, of the limited
15 partner agreement?

16 A Yes.

17 Q And did the limited partners remove you as the general
18 partner of the partnership at that time?

19 A That was what they attempted to do, yes.

20 Q Well, that's not what they did right away, was it? There
21 were further overtures to try to resolve this issue without
22 having to remove you. Isn't that right?

23 A There was further communication.

24 Q Yeah. Let's take a look at Exhibit A-212, which is
25 another letter from me. This one is dated November 3, 2017.

1 It's a very lengthy letter. I'm not going to go through it
2 all, but I do want to direct your attention to page 6, the
3 bottom half of that page.

4 And I write, "In an effort to resolve this dispute as
5 efficiently as possible, the investor limited partner is
6 willing to accept any of three possible options: The first
7 option is for the managing general partner to agree to allow
8 the investor limited partner to work with CBRE and to market
9 and sell the property. As you acknowledged in your
10 August 11, 2017 letter, marketing the property for sale will,
11 by definition, provide us with the most accurate
12 determination of fair market value.

13 "The second option is for the managing general partner
14 to purchase the investor limited partner's interest, based on
15 the property's midpoint value as determined by CBRE, in the
16 BOV that you commissioned and subsequently hid from the
17 investor limited partner, i.e., \$21.3 million.

18 "The third option is for your client to cooperate
19 voluntarily with its removal as the managing general
20 partner."

21 Then it goes on to say, "To the extent that the
22 managing general partner refuses to accept any of the three
23 options, the investor limited partner will have no choice but
24 to exercise its right to remove your client."

25 Do you see that?

1 A I do.

2 Q And you did not accept any of those three options, did
3 you?

4 A No.

5 Q The last sentence of my letter asks that you -- you to
6 please advise -- this is written to your lawyer, so it says,
7 "Please advise as to how your client wishes to proceed, no
8 later than next Wednesday, November 8, 2017." Do you see
9 that?

10 A I do.

11 Q And did your lawyer respond on August 8, 2017?

12 A On August --

13 Q I'm sorry?

14 A What date was this letter written?

15 Q This letter was written -- I'm sorry. Did I say August?

16 A Yes.

17 Q I meant November. My apologies. This was written on
18 November 3, 2017, and requested a response by November 8,
19 2017. And my question is: Do you know if your counsel ever
20 provided a response to that letter?

21 A Most likely, yes.

22 Q You're right, he did. So let's take a look at A-214.

23 So this is a letter -- another letter from Joseph
24 McCarthy at Stoel Rives, November 8, 2017. And it says,
25 "Dear Mr. Pettit. I received your lengthy letter on Friday,

1 November 3rd. You imposed a November 8th deadline for a
2 response. Your deadline is unreasonable, in light of the
3 length and rhetoric of your letter, and your client's threat
4 to remove the general partner unless it accedes to your
5 demands. I will respond by the 15th." Do you see that?

6 A I do.

7 Q And Stoel Rives responded before November 15th; isn't that
8 right?

9 A Well, November 8th is before the 15th, yes.

10 Q Well, this letter says, "I will respond by the 15th." So
11 I understand that to mean that Stoel Rives would further
12 respond to my November 3rd letter by November 15th. Is that
13 how you take it?

14 A I'm sorry, what's the question?

15 Q My question is whether you understood this letter to be
16 communicating to me that Stoel Rives would get back to me by
17 November 15th.

18 A Mr. McCarthy wrote this letter.

19 Q And so are you saying that you don't understand what this
20 letter is saying?

21 A I see what it says. Yes.

22 Q What do you understand it to be saying?

23 A Well, exactly what it says, yes. And it said he would
24 respond by the 15th.

25 Q I'm not trying to trick you on anything here. I promise.

1 So let's take a look at a letter -- this has not been
2 marked as an exhibit, but it's a letter from counsel at Stoel
3 Rives, November 14, 2017, so the day before Mr. McCarthy said
4 he was going to get back to me on the options that I had
5 suggested at the behest of my client.

6 And on November 14, 2017 Mr. Pritchard -- excuse me,
7 Mr. McCarthy from Stoel Rives says, "I am responding to your
8 letter of November 3rd. In your letter you reject the
9 Colliers appraisal and demand that the general partner either
10 let the limited partner market and sell the property, or
11 purchase the limited partner's interest at a value of
12 \$21.3 million, or resign as general partner."

13 Then the letter goes on to say, "After discussing your
14 letter with my client, we have concluded there is no reason
15 to discuss this matter further. Enclosed please find a copy
16 of the complaint in Hidden Hills Management versus AMTAX 114
17 that was filed in the Superior Court for Pierce County,
18 Washington today." Do you see that?

19 A Yes.

20 Q During a time Mr. McCarthy asked me to forbear because he
21 needed to review my letter and get back to me, he was
22 preparing a complaint to file in state court; is that right?

23 A Presumably.

24 Q Okay. And at that point, on November 14, 2017, you had
25 not been removed as the general partner; is that right?

1 A I believe so.

2 Q And, in fact, let's take a look at Exhibit A --

3 THE COURT: Mr. Pettit, let's take that up after the
4 midafternoon break. We'll be at recess for 15 minutes.

5 (Recess.)

6 THE COURT: Mr. Pettit, you may proceed.

7 CROSS-EXAMINATION (Resumed)

8 BY MR. PETTIT:

9 Q Ms. Tamaro, I would like to show you Exhibit A-222. You
10 will see that this is an email from Anthony Olivo at Alden
11 Torch to you, attaching correspondence. Do you see that?

12 A Yes.

13 Q The date is November 30th, 2017?

14 A Yes.

15 Q If you go to the next page of this exhibit, you will see
16 there is a letter there reporting to remove you, Hidden Hills
17 Management, as the general partner of Hidden Hills. Do you
18 see that?

19 A I do.

20 Q This is the removal notice that is being challenged by you
21 in this case, correct?

22 A Correct.

23 Q That was served on you after you had filed a lawsuit
24 against your limited partner; is that right?

25 A Yes.

1 Q Quickly, for purposes of making sure I have the right
2 record here, I would like to pull up Exhibits A-94, A-101,
3 A-148, A-159 and A-171. Those are all invoices from
4 Environmental Partners, Inc., and we can go through them one
5 by one, or you can just -- if you feel confident without
6 having to confirm them. My question is whether the
7 partnership paid all of these invoices to EPI?

8 A Yes, it did.

9 Q Now, over the course of this lawsuit, your calculation of
10 the option price to which AMTAX is entitled, based on your
11 exercise for Hidden Hills, has evolved, is that fair to say,
12 or changed over time?

13 A There have been some adjustments, yes.

14 Q Let's take a look at your declaration that we were looking
15 at before, which you filed in state court in late 2017. I
16 would like to particularly direct your attention to pages 6
17 and 7 of that document. All right. I do have the right
18 document. Let's go back one page. I'm sorry. I will come
19 back to this. I'm sorry.

20 Let's go to Exhibit 239, page 6.

21 THE COURT: Exhibit A-239?

22 MR. PETTIT: I'm sorry. Yes, Exhibit A-239.

23 BY MR. PETTIT:

24 Q Ms. Tamaro, Exhibit A-239 are interrogatory responses that
25 the general partners served in connection with the Hidden

1 Hills portion of this dispute. Interrogatory No. 8 asks you
2 to describe the factual basis of your allegation in paragraph
3 31 of the complaint that you have calculated the purchase
4 price you must pay in connection with the exercise of the
5 buyout option to be \$531,748. Do you see that?

6 A Yes.

7 Q In your response to that interrogatory you say, "HHM sent
8 to AMTAX's counsel a letter dated December 18th, 2017 in
9 which HHM revised the relevant calculation of the purchase
10 price and acknowledged a total due to the limited partners of
11 \$1,051,856." Do you see that?

12 A Yes.

13 Q Says, "The previous purchase price of 531,748 was arrived
14 at because HHM, in accordance with 6.2.B.8 of the LPA,
15 included a distribution of the positive balance in its
16 capital account in the spreadsheet. After consulting with a
17 tax attorney, HHM adjusted its capital account by the amount
18 of HHM's deferred developer fee that had been converted to a
19 capital contribution. Once that adjustment was made, the
20 amount due to the investor limited partner and special
21 limited partner increased to a little over one million." Do
22 you see that?

23 A Yes.

24 Q The number that you put in the complaint you filed was
25 inaccurate; is that right?

1 A No. I would not say inaccurate.

2 Q Well, your tax attorney thought it needed to be adjusted;
3 is that fair to say?

4 A I consulted with the tax attorney. Tax issues are not
5 always straightforward. Tax attorney gave me his conclusion,
6 and I modified my spreadsheet to reflect the tax attorney's
7 conclusion.

8 Q It was the tax attorney's conclusion that 531,748 was too
9 low; is that right?

10 A It was the tax attorney's conclusion that in that
11 particular line item of the spreadsheet, I needed to make an
12 adjustment and the adjustment was in favor of AMTAX 114.

13 Q Okay. He didn't say anything about the number. He just
14 said there needs to be an adjustment, and the result of the
15 adjustment was that the number went up?

16 A Correct.

17 Q Okay. I would like to show you Exhibit 155, which is
18 something that you were asked about on direct examination.
19 This is a letter from you to Chris Blake at Alden Torch
20 Financial. It is dated May 7, 2020. I think you
21 acknowledged on direct examination that that is a typo, and
22 that the correct date this was sent was May 7, 2019; is that
23 right?

24 A Yes.

25 Q The first paragraph of your letter there says, "Pursuant

1 to Section 7.4.J of the limited partnership agreement, Hidden
2 Hills Management accepts the Cushman & Wakefield appraisal of
3 \$19,700,000 as the basis for calculating the fair market
4 value of the interest of AMTAX 114 and Protech." Do you see
5 that?

6 A I do.

7 Q It goes on to say, "Pursuant to Sections 6.2.B.2 and 7.8.D
8 of the LPA, HHM's payment to AMTAX and Protech will be
9 \$4,968,506." Do you see that?

10 A I do.

11 Q First of all, we already talked about Section 6.2.B.2,
12 that's the sales proceed waterfall; is that right?

13 A Yes.

14 Q What is Section 7.8.D?

15 A That is the section that covers the disposition of the
16 environmental escrow.

17 Q In the partnership agreement for Hidden Hills, there is
18 actually a separate section that deals with how you -- to the
19 extent that there is still money in the environmental
20 reserve, how that would be distributed among the partners
21 upon dissolution or liquidation; is that right?

22 A Correct.

23 Q First of all, where in Section 7.4.J of the partnership
24 agreement does it allow one of the partners to accept the
25 appraisal performed by the other partner? Is that anywhere

1 in Section 7.4.J?

2 A No, there is not such a provision.

3 Q In fact, Section 7.4.J lays out a very specific process
4 for how the option price is determined; is that right?

5 A It does.

6 Q It requires each of the limited partners to appoint an
7 appraiser, and if those appraisers can't agree, then they
8 jointly select a third appraiser, and that appraisal will be
9 final and binding; is that right?

10 A Yes.

11 Q That's not what you are purporting to do in the May 7th,
12 2019 letter, is it?

13 A We are accepting the appraisal in order to calculate the
14 value of the interest under Section 7.4.J.

15 Q Isn't it true, Ms. Tamaro, that you were accepting this
16 appraisal that happened two years before because you were,
17 once again, trying to circumvent or avoid the process that's
18 specifically described in Section 7.4.J?

19 A No.

20 Q Let's look at Exhibit A-295. This is an email from your
21 counsel, Mr. Goodnight, to me dated May 21st, 2019,
22 responding to an email I sent to him a couple days earlier --
23 a few days earlier regarding the waterfall calculation for
24 Hidden Hills. Do you see that?

25 A I do.

1 Q I had responded to the letter suggesting that the purchase
2 price be 4.9 million by raising issues with the fact
3 calculation and stating that, while disagreeing that
4 Cushman & Wakefield was the controlling appraisal, even under
5 that appraisal, the amount that you had was too low; is that
6 right?

7 A You had highlighted three areas where you said there were
8 differences between my calculations and AMTAX 114's
9 calculations.

10 Q Those calculations resulted in an option price that was
11 lower than it would otherwise be; is that right?

12 A I don't know "otherwise be."

13 Q That's fair.

14 A I made some assumptions when I was putting together my
15 spreadsheet. For example, this 3 percent, this could have
16 been resolved a long time ago. There had not been dialogue
17 between the general partner and limited partner, but that is
18 two different parties making their own assumptions, and I
19 agreed to accept AMTAX's assumption on that 3 percent.

20 On the priority of loan repayment, I received your
21 comment, and I looked at the financial statements. I looked
22 at the partnership agreement, and I agreed that AMTAX had
23 caught an error. I corrected it, and it will get corrected
24 in the financial statements.

25 Q Is it the responsibility of the limited partner to catch

1 errors that the general partner makes that result in material
2 negative adverse impact -- economic impact on the limited
3 partner?

4 A I cannot imagine why they wouldn't look at the numbers
5 also and come back and say this is what we see.

6 Q Do they have an affirmative obligation to do that or can
7 they trust that their fiduciary will provide a correct
8 calculation?

9 A I would expect them to review the numbers on their own.

10 Q When you were asked about this change in the number over
11 time, and particularly this change from the 4.9 million to
12 the 5.6 or 5.7 million, you said, well, this is a negotiation
13 process and that's how it goes sometimes. Do you remember
14 testifying to that?

15 A In terms of the back and forth on making corrections to
16 the spreadsheet, for example, the 3 percent, that is nobody's
17 error. That is two different interpretations of how to
18 approach modeling a hypothetical sale. AMTAX had their way
19 to do it, and I agreed to use their way. That is nobody's
20 error. The financial statements I had, yes, I had applied
21 loan repayments in the incorrect priority. I acknowledged
22 that, and I corrected it.

23 Q Did you -- in your mind, was this a negotiations -- I
24 mean, you describe it as a negotiations process. Were you
25 using a lower number and sort of hoping that that could

1 squeak by, and only when the limited partner raised a concern
2 about it you said, oh, well, I will correct this and make it
3 higher; is that what happened?

4 A No.

5 Q I would like to turn your attention to Parkway. I would
6 like to spend a couple minutes going over the documents you
7 looked at in direct examination regarding Parkway's exercise
8 of its option.

9 If you could pull up Exhibit 128, please.

10 So Exhibit 128, Ms. Tamaro, is your letter purporting
11 to exercise the general partner's option under Section 7.4.J
12 of the Parkway LPA; is that right?

13 A Yes.

14 Q This is two days or three days after the beginning of the
15 option period for Parkway; is that right?

16 A Correct.

17 Q In this letter you say, in the last sentence, "The
18 administrative general partner has identified CBRE as its
19 appraiser, and estimates CBRE will be ready to proceed with
20 its appraisal by the end of January 2018." Do you see that?

21 A Yes.

22 Q Was it Todd Henderson again who you went to, to perform
23 this appraisal?

24 A Correct.

25 Q You didn't -- was it the case that when you sent this

1 letter on January 3rd the appraisal hadn't been completed
2 yet?

3 A It takes us about to the end of the month to post all the
4 bills for the previous year, which gives accurate profit and
5 loss. We can't do it right on the 3rd day of January because
6 Todd wants to see profit and loss, and that includes expenses
7 and invoices. They can take a few weeks to all be collected
8 by us.

9 Q I see. So what you are saying is that it will be -- they
10 won't be -- this is actually not reading it more clearly.
11 They will be ready to proceed with their appraisal by the end
12 of January 2018; is that right?

13 A Correct.

14 Q That was for the reason you just described?

15 A Correct.

16 Q So at the time that you sent that letter, there was -- you
17 hadn't even gotten an appraisal yet; is that right?

18 A I had not obtained an appraisal dated at the end of 2017.
19 I had told Todd that it would take us through the month of
20 January, which is not unusual for the -- all of the year end
21 invoices to be received and posted so that he had accurate
22 profit and loss figures for 2017.

23 Q Even if the limited partner had gotten back to you on
24 January 4th, 2018, the next day and said, we appoint this
25 person, they wouldn't be able to start their appraisal at

1 that point, right, they would have to wait?

2 A It would be advisable to wait for the December invoices to
3 all be received and posted.

4 Q So there was no real urgency to have a response to your
5 letter immediately when you sent it on January 3rd, 2018,
6 correct?

7 A I am not sure what you mean by that.

8 Q What I mean is that in your letter you say that CBRE, the
9 appraiser you have identified, isn't going to even begin
10 starting their appraisal until the end of the month, so there
11 wasn't any urgency reflected in your letter that you needed
12 to have an immediate response, was there?

13 A I'm sorry. I don't know how to answer that.

14 Q Is there anything in your letter that requested immediate
15 response?

16 A No.

17 Q Let's take a look at Exhibit 131. This is a February
18 15th email -- February 15th letter, also from you, also to
19 Mr. Blake. At this point, on February 15th, you say that
20 334th Place 2001, LLC, which is the general partner, has
21 completed its appraisal requirement and has in hand an
22 appraisal by CBRE dated January 1st, 2018. Do you see that?

23 A I do.

24 Q Now, you did not provide the limited partners with a copy
25 of CBRE's appraisal with this letter, did you?

1 A It was not included with this letter, no.

2 Q You had it in hand, but you elected not to provide it,
3 correct?

4 A Yes.

5 Q And your -- the last paragraph of your letter says, "AMTAX
6 has received all documentation necessary for it to obtain an
7 appraisal of the project. As of this date, the GP has not
8 received any acknowledgement or response, therefore I am
9 requesting that you inform me of the date when you anticipate
10 receiving completed appraisal of the project." Do you see
11 that?

12 A Yes.

13 Q You were asking for a response there, correct?

14 A Yes.

15 Q You got a response on March 6th, 2018; is that right?

16 A Yes.

17 Q Let's look at Exhibit 132. This is a letter from Alden
18 Torch to you dated March 6, 2018. If you look at the -- you
19 will see that it is responding to the letter to Chris Blake,
20 February 15th, 2018, which was received on February 21st,
21 2015 (sic). You will see that paragraph goes on to say, "You
22 claim that you have an appraisal in hand. Your letter fails
23 to enclose a copy of the CBRE appraisal or to provide any
24 information about how it was obtained. Given what we believe
25 and have alleged was bad faith conduct on your part in the

1 appraisal process for the Hidden Hills Apartments, a matter
2 which, as you know, is currently the subject of ongoing
3 litigation, we must have an opportunity to review the CBRE
4 appraisal and understand the circumstances surrounding its
5 preparation. We accordingly request you send us a copy of
6 the CBRE appraisal referenced in your letter as well as any
7 communications you had with CBRE appraiser concerning the
8 Parkway Apartments." Do you see that?

9 A I do.

10 Q The litigation that is being referenced there is this
11 litigation, correct?

12 A Yes.

13 Q This litigation was already in process at the time that
14 you exercised your option for Parkway; is that right?

15 A Yes.

16 Q Now let's look at the next paragraph of this letter, which
17 is at the bottom of the first page of Exhibit 132. Says,
18 "AMTAX is also in the process of evaluating questionable
19 activity by the general partner in its capacity as a general
20 partner, including a failure to maximize rental income, the
21 growth of operating expenses at rates that are
22 disproportionately higher than comparable properties, and the
23 payment of fees and distributions to 334th Place or its
24 affiliates that either are not permitted by or in excess of
25 amount permitted by the partnership." Do you see that?

1 A I do.

2 Q The limited partner is telling you we are working our way
3 through this, right? They say, "We are in the process of
4 evaluating questionable activity," correct?

5 A They say they are in the process of evaluating
6 questionable activity.

7 Q They go on to give you a general description of some of
8 the activity they were investigating, correct?

9 A Yes.

10 Q You knew they were following up on your exercise, right?

11 A I knew what they said in this letter.

12 Q Just wasn't quickly enough for you; is that fair to say?

13 A No.

14 Q Do you think that they were not being honest about the
15 evaluation that they were doing or that they referenced in
16 their letter?

17 A No.

18 Q No, you don't think they were being honest?

19 A I'm sorry. What is your question?

20 Q I will strike the question. I will withdraw the question.
21 The judge has to strike it. I withdraw.

22 135. Let's look at Exhibit 135. May 8, 2018. This is
23 the letter that substantively responds and addresses all of
24 the issues that they have been evaluating; is that right?

25 A This is their response.

1 Q This letter includes a number of items that have now
2 become the subject of this litigation, correct?

3 A They have listed what they have listed.

4 Q The things they have listed there are some of the things
5 that they have challenged in this lawsuit in their
6 counterclaims, correct?

7 A Yes.

8 Q Let's talk about some of these fees. I want to start with
9 one of the fees that Ms. Latsinova addressed with you, which
10 is the Hearthstone -- what -- how is that fee referred to?
11 What is the title of the fee they are entitled to receive?

12 A Hearthstone is the managing general partner, so it would
13 be the managing general partner fee.

14 Q The managing general partner fee. I think you testified
15 that is approximately \$10,000 a year?

16 A Approximately, yes.

17 Q That was a fee that they received in exchange for agreeing
18 to serve as a general partner of the Parkway Partnership; is
19 that right?

20 A It is their fee for their services to the Parkway
21 Partnership.

22 Q As a general partner?

23 A As the managing general partner.

24 Q One of the benefits that they are able to deliver to the
25 partnership is a property tax exemption because they are

1 non-profit; is that right?

2 A Yes.

3 Q Let's take a look at the amendment to the partnership
4 agreement where they became involved. I believe that is
5 Exhibit 28. Is this the amendment to the Parkway Partnership
6 Agreement that admits Hearthstone Housing Foundation as a
7 general partner or the managing general partner for Parkway?

8 A Yes.

9 Q Is this the document that lays out the fees that
10 Hearthstone is entitled to receive?

11 A Yes.

12 Q Does is this document also describe the how those fees are
13 to be paid?

14 A It does.

15 Q Let's go to page 2. If you look at Item 5. It says,
16 "Section 6.2A is hereby amended by inserting the following
17 new provision fourth and re-numbering the remaining
18 provisions of Section 6.2A accordingly." Then it says,
19 "Fourth to the payment of the general partner fee."

20 Ms. Tamaro, Section 6.2A is the cash flow waterfall for the
21 Parkway LPA; is that right?

22 A It is.

23 Q To the extent that the Parkway Partnership has cash flow
24 sufficient to reach the fourth tier of the cash flow
25 waterfall, then that money would go to pay the managing

1 general partner fee, and to the extent there is surplus funds
2 after that, it would go down to the fifth tier of the
3 waterfall; is that right?

4 A Yes.

5 Q Is there any provision in this amendment for what happens
6 if there is insufficient cash flow to pay the managing
7 general partner fee?

8 A In this agreement, no, there is not.

9 Q Typically when there is insufficient funds to pay a fee
10 under the partnership agreement, what happens to that fee?

11 A If there are insufficient funds, then usually I would
12 advance funds to cover the invoice.

13 Q Well, what I am asking is not what you would do normally.
14 I am asking you, is there a provision in the partnership
15 agreement that identifies what happens when there is
16 insufficient funds to pay a fee that someone is entitled to
17 receive under the partnership agreement?

18 A There is not a separate provision, no.

19 Q Well, like, for example, I think you testified earlier in
20 your examination that you had -- we went through some of the
21 fees that you were entitled to receive. I think one of them
22 was an incentive fee. We can go back and look. You had
23 testified you never received that fee; is that right?

24 A Correct.

25 Q What I am asking is, does that mean that you don't get

1 that fee or does it get booked as something that is a payable
2 to you at the point where there is sufficient cash flow to
3 cover that?

4 A Well, that particular fee is non-commuted. It just
5 disappears if it is not paid that year.

6 Q What about the managing general partner fee?

7 A We have to look in the agreement to see what it says.

8 Q You would agree with me that the agreement controls
9 whether the managing general partner fee can be paid; is that
10 right?

11 A I don't know if I would say "can be paid." I would say
12 can be paid out of cash flow.

13 Q Well, do you think that the limited partnership agreement
14 provides you with a contractual right to pay the managing
15 general partner fee from sources other than cash flow under
16 Section 6.2A?

17 A I am really not clear on your question.

18 Q What I am asking you is whether there is any contractual
19 provision that allows for the payment of the managing general
20 partner fee from funds other than operating cash flow in the
21 waterfall as described in this 5 here that we have pulled up?

22 A I am still just not sure how to answer your question.

23 Q Is it that you don't understand my question?

24 A Yeah.

25 Q Okay. What I am trying to find out is, so this tells you

1 how to pay the managing general partner. It says you pay it
2 out of operating cash flow. Correct?

3 A Correct.

4 Q Now, what I am asking you is, is there any provision that
5 gives you any alternative way -- in the partnership agreement
6 that gives you any alternative way to pay the managing
7 general partner fee?

8 A In the partnership agreement it says it shall be paid out
9 of cash flow.

10 Q There is no other --

11 A It is not addressed twice in the agreement.

12 Q Okay. If there is insufficient cash flow under the
13 partnership agreement, it is not supposed to be paid; is that
14 right?

15 A Correct.

16 Q You went ahead and paid it anyway; is that right?

17 A I did.

18 Q And you made advances to the non-profit partner to pay
19 that fee; is that right?

20 A I did.

21 Q You booked those advances as subordinated loans to be
22 repaid by the partnership when there were sufficient funds to
23 do so; is that right?

24 A I did.

25 Q Where in the partnership agreement are you permitted to do

1 that?

2 A I may not be.

3 Q Where in the partnership agreement is -- now, let's go to
4 the last page of this amendment. One page earlier. One page
5 earlier.

6 This was signed by Coco Vasquez at Hearthstone Housing
7 Foundation; is that right?

8 A It was.

9 Q This is a binding contractual agreement by Hearthstone
10 that they are legally required to comply with; isn't that
11 right?

12 A This is the agreement by which they joined the
13 partnership.

14 Q Now, I think you testified in direct examination that you
15 felt like you needed to pay the fee because if you didn't,
16 they would walk away from the project; is that right?

17 A I didn't testify I felt to. I was told directly by
18 Coco Vasquez.

19 Q Did Coco Vasquez point to you any provision in this
20 agreement that allows them to unilaterally withdraw from the
21 partnership?

22 A I believe they have that right.

23 Q Where is that?

24 A You have to look at the agreement.

25 Q Let's take a look. The entire partnership agreement or

1 just this amendment?

2 A It would be -- well, their withdrawal would be in this
3 amendment.

4 Q Okay. Do you want -- well, never mind. The document
5 speaks for itself.

6 Let's take a look at Exhibit 2. Sorry, Exhibit 3.
7 This is the Parkway Partnership Agreement. I want to direct
8 your attention specifically to Section 7.9, which is on page
9 50 of this exhibit. You see at Section 7.9 down at the
10 bottom of page 50, "obligation to provide for project
11 expenses." Do you see that?

12 A Yes.

13 Q This is a provision that allowed the managing general
14 partner to discharge project expenses through subordinated
15 loans; is that right?

16 A Yes.

17 Q Do you see that there is a parenthetical at the top of
18 this where it says that the managing general partner agrees
19 that if the partnership requires funds to discharge project
20 expenses, and then says in parentheses, "other than that to
21 make payments to partners." Do you see that?

22 A I do.

23 Q So this managing -- management fee that goes to
24 Hearthstone, Hearthstone is a partner; isn't that right?

25 A Yes, they are.

1 Q Did you ever ask the limited partner if you could -- they
2 would be willing to amend the partnership agreement so that
3 you could make these advances to the non-profit?

4 A What I can say, and I am not a tax attorney, but I have --
5 they were put in as that partner and in that priority for tax
6 reasons. It is not necessarily something that could be
7 amended.

8 Q So you just decided to unilaterally amend it by advancing
9 them money? I don't understand.

10 A I decided to continue paying them their fee to keep them
11 in the partnership.

12 Q You are saying that there may be tax implications behind
13 that decision?

14 A There were reasons why this agreement was structured the
15 way it was.

16 Q Okay. And have you -- by paying them in a way that is
17 different from the way that is required under this agreement,
18 do you know whether that is creating tax issues for the
19 partnership?

20 A I have not been told that.

21 Q Did you consult with an accountant before you made a
22 decision to pay these fees out of subordinated loans?

23 A Yes, John Maddux was well aware of what I was doing.

24 Q Did he give you assurance that paying these fees through
25 advances would not run afoul of the tax code?

1 A He did not.

2 Q He did not give you that confidence?

3 A We did not discuss that issue.

4 Q What did you discuss?

5 A We discussed the fact that I was paying Hearthstone
6 Housing to keep them in the partnership so that the
7 partnership could continue to benefit from their membership
8 in the partnership.

9 Q What was it that you were asking him?

10 A That John was aware that I was advancing funds to the
11 partnership to pay Hearthstone.

12 Q Were you asking for his advice on anything?

13 A I was disclosing to him that -- he knew it, he could see
14 the bill, that I was advancing funds to pay for Hearthstone.

15 Q Did he express any concern to you about what you were
16 doing from the tax perspective?

17 A He did not.

18 Q Again, going back to my question, did you ever reach out
19 to the limited partner and say, gee, can we amend the
20 partnership agreement so I can make these advances to
21 Hearthstone because otherwise they are not going to get paid,
22 and they really need to get paid?

23 A I do not -- I am not certain that it could be amended in a
24 satisfactory way.

25 Q I guess I am hung up on why you think doing something that

1 would not be -- that you couldn't memorialize wouldn't
2 potentially cause you problems. If you think that it
3 couldn't be amended, then how is it that you are able to go
4 ahead and do the thing that you are saying the amendment
5 can't do?

6 A Again, I am not sure how to answer your question.

7 Q I want to talk about the excess management fee that was
8 charged by the management agent that you testified about in
9 your deposition. Let's look at Exhibit 29. That is a
10 property management agreement between Parkway and Trieste
11 Holdings. Do you see that?

12 A I do.

13 Q Trieste is your property management company; is that
14 right?

15 A Yes.

16 Q This is an agreement whereby Trieste is agreeing to become
17 the management agent for the Parkway Partnership; is that
18 correct?

19 A Yes.

20 Q There was a subsequent amendment -- this agreement was
21 subsequently amended in 2010; is that right?

22 A I believe so.

23 Q Let's take a look at Exhibit 40. You see that is also a
24 property management agreement between Trieste and Parkway.
25 This one is dated May 2010. Do you see that?

1 A I do.

2 Q If you turn -- if we could take a look at page -- first of
3 all, who drafted this property management agreement?

4 A Robert Sullivan.

5 Q Who is Robert Sullivan?

6 A He has been my counsel.

7 Q A transactional attorney?

8 A Correct.

9 Q Let's go to page 9. If you look at the bottom of this
10 page, Article 8 under "compensation," if you could blow that
11 up, please. "The manager will be compensated for its
12 services under this agreement by a monthly fee to be paid out
13 of the operating account and treated as a project expense.
14 Such fee will be payable on the first day of each month of
15 the agreement. Each monthly fee will be equal to ten percent
16 of the effective gross rental income." Do you see that?

17 A I do.

18 Q When you asked Mr. Sullivan to prepare this document, did
19 you give him a copy of the partnership agreement?

20 A I am not sure how to answer that. I guess I am not sure
21 what you are asking.

22 Q Did you ask Mr. Sullivan to draft this agreement, the
23 property management agreement?

24 A This is an agreement Mr. Sullivan has drafted that he
25 provided to me.

1 Q At your request?

2 A He had provided this to me several years prior.

3 Q In 2007?

4 A May have been. May have been a different year. He had
5 provided it to me prior to this.

6 Q Presumably since he's an attorney that you are hiring, he
7 does these things because you have asked him to do them;
8 isn't that right? He wouldn't do it without you instructing
9 him to do it, would he?

10 A I am still not clear what you are asking. I'm sorry.

11 Q What I am asking is did you ask Mr. Sullivan to prepare
12 this document, whether it was in 2006, 2007, 2010, when
13 you -- when this document was first created, was it because
14 you had asked him to prepare a property management agreement
15 for Trieste and Parkway?

16 A Mr. Sullivan had already prepared this agreement and
17 forwarded it to me.

18 Q How did he know to prepare it?

19 A He had already prepared it. I don't know.

20 Q I am asking you, before he prepared it, how did he know to
21 go about preparing it?

22 A Mr. Sullivan did not do this exclusively for me. This was
23 an agreement that Mr. Sullivan had -- you asked who drafted
24 it. Mr. Sullivan drafted it. He provided a copy to me.

25 Q Who else was involved?

1 A In that transaction?

2 Q Yes.

3 A It was just me and Rob Sullivan.

4 Q I thought you said there were other people involved in
5 this.

6 THE COURT: I think she's describing a model
7 agreement.

8 BY MR. PETTIT:

9 Q Is that what you are saying, there was a template that he
10 worked off; is that what you mean?

11 A Mr. Sullivan has provided property management agreements
12 to others of his clients in addition to me.

13 Q Presumably only when they ask for them, right?

14 A Yes.

15 MS. LATSINOVA: Objection. Speculation.

16 THE COURT: Wait, just a second.

17 MS. LATSINOVA: Objection, calls for speculation.

18 THE COURT: Shortly. This is cross-examination. I
19 don't think this is very productive.

20 MR. PETTIT: I will move past this. I apologize,
21 Your Honor.

22 BY MR. PETTIT:

23 Q You would agree the ten percent rate that is reflected in
24 this agreement is higher than the maximum rate permitted
25 under the Parkway Limited Partnership Agreement?

1 A I would agree, yes.

2 Q That is something that I think you testified to resulted
3 in an overpayment being made in 2011 that you said was
4 returned in 2012; is that right?

5 A Yes. It was corrected. I would use the word "corrected"
6 in 2012.

7 Q Okay. What I am asking is were the funds returned to the
8 partnership?

9 A My recollection is that in 2012 they were returned to the
10 partnership, and in 2011 there had been an adjustment to
11 compensate for it.

12 Q Do you know if the return and adjustment resulted in
13 putting the partnership back to where it would have been if
14 the excessive fee had never been charged?

15 A I believe so.

16 Q Now, I think you testified at your deposition that this
17 ten percent number was put in at the auditor's suggestion; is
18 that right?

19 A Yes.

20 Q So was the auditor communicating with Mr. Sullivan in
21 connection with the preparation of this document?

22 A I don't believe so.

23 Q The auditor communicated to you that ten percent was the
24 right amount and you communicated that to Mr. Sullivan?

25 A I modified the existing agreement. Mr. Sullivan didn't do

1 this modification.

2 Q Oh, so you put the ten percent in there?

3 A Yes.

4 Q Okay. That clarifies things. Thank you.

5 When you put the ten percent in there, did you look at
6 the limited partnership agreement to see if that was within
7 acceptable limits?

8 A I neglected to.

9 Q Who figured out this was an issue?

10 A Gary Newbold.

11 Q Who is Gary Newbold?

12 A Alden Torch.

13 Q If Alden Torch hadn't been on their toes, this excess fee
14 could continue to be paid today; isn't that right?

15 A I can't answer that.

16 Q Well, you didn't discover this issue, correct?

17 A Alden Torch -- Gary Newbold said, "That's too much." I
18 said, "You are correct," and I acknowledged it.

19 Q You put the ten percent in there. You didn't check the
20 partnership agreement. You didn't realize you made a
21 mistake, and it was only after the limited partner pointed
22 out the mistake, then you corrected; is that right?

23 A Yes.

24 Q I would like to just very briefly identify the affiliates
25 of yours at issue in this case. We have already talked about

1 Trieste. Trieste is your property management company?

2 A Yes.

3 Q You co-own that with your husband, Mr. Arterberry?

4 A Yes.

5 Q Trieste is the property manager of Parkway and Hidden
6 Hills; is that right?

7 A Yes.

8 Q Is Trieste the property manager of your other seven LIHTC
9 properties?

10 A Yes.

11 Q In addition to being the property manager, Trieste, I
12 think you testified, is also performing general contractor
13 functions at the partnership separate and distinct from its
14 responsibilities as the managing agent; is that right?

15 A Yes.

16 Q The other affiliates that are at issue here, one is your
17 husband, Mr. Arterberry, who has done some work for the
18 partnership; is that right?

19 A Yes.

20 Q That's both legal work and engineering work?

21 A Yes.

22 Q Then there is an entity called Westside Estates that
23 provided services related to extermination, bed bug
24 extermination; is that right?

25 A North Pearl Street, which owns Westside Estates, is the

1 affiliate which provided the services.

2 Q Okay. So North Pearl Street is the actual owner of the
3 bed bug heater?

4 A North Pearl Street, LP.

5 Q Then I think I have this right. The adjacent property
6 where the general contractor who provides services at Parkway
7 and gets a rent credit, that is North City Landing; is that
8 right?

9 A Yes.

10 Q I would like to ask you a few questions about the charges
11 that your husband, Mr. Arterberry, charged to the Parkway
12 Partnership. I would first like to look at the engineering
13 services he provided. Let's take a look at Exhibit A-43.
14 That, I believe, is the invoice related to services that he
15 provided in connection with the installation -- or the
16 procurement and installation of a trash compactor; is that
17 right?

18 A Yes.

19 Q You didn't competitively bid this project?

20 A To be honest, I don't competitively bid professional fees
21 in most cases.

22 Q And that is true even if you are planning on hiring an
23 affiliate?

24 A His fees are reasonable. This was a situation where we
25 needed counsel, we needed an engineer, we needed to address

1 the situation. Mr. Arterberry is qualified to do this. I am
2 allowed to hire affiliates.

3 Q My -- I think you testified that you don't normally bid
4 out jobs that involve professional services. My question
5 was, whether you make an exception for that when the
6 professional who you are hiring is your husband or some other
7 affiliate?

8 A Not necessarily.

9 Q And you didn't in this case, correct?

10 A No, I did not.

11 Q I think you testified in your direct examination that your
12 husband was involved in selecting the trash compactor and
13 researching that issue; is that right?

14 A Yes.

15 Q I think you also testified that the trash compactor that
16 he selected was incompatible with Parkway's wiring; is that
17 right?

18 A Yes.

19 Q So as a result, he needed to do additional work in order
20 to make the trash compactor compatible -- or make the wiring
21 at Parkway compatible with the trash compactor; is that
22 right?

23 A Not make the wiring compatible. It is an electrically
24 wrong compactor, and the Parkway isn't a -- a residential
25 area is not typically wired to deliver that type of power.

1 Q Do you know if your husband made any inquiry into what
2 type of power would be necessary for this compactor before he
3 ordered it for the partnership?

4 A It would be unlikely -- it would be highly unlikely that
5 you could find a trash compactor that you could simply plug
6 into the wall.

7 Q Do you know if he tried?

8 A I do not know. What he did is procure a suitable
9 compactor for Parkway, and then get it operational.

10 Q You testified that it was incompatible with Parkway's
11 wiring; isn't that right?

12 A That is not unusual. It is a 20-horse-power motor.

13 Q Did you know at the time you ordered the trash compactor
14 that you would need to do the additional work to make it
15 function in the Parkway Apartments?

16 A I do not know.

17 Q Do you know whether you ever informed the limited partner
18 that you were hiring your husband to perform engineering
19 services in connection with the installation of the trash
20 compactor?

21 A Probably not.

22 Q I would like to ask you some questions about the charges
23 that Mr. Arterberry made to the partnership related to legal
24 services. I think you testified on direct examination that
25 Mr. Arterberry's -- he was an engineer first and then became

1 a lawyer later; is that right?

2 A That's the sequence.

3 Q When did Mr. Arterberry graduate law school?

4 A 1999.

5 Q Does Mr. Arterberry have -- maintain an active legal
6 practice?

7 A He does.

8 Q Does he have clients that are not affiliated with any of
9 the entities that he and -- he and/or you have an ownership
10 interest in?

11 A From time to time.

12 Q Is the majority of the work that he does as an attorney
13 work that he does for affiliates?

14 A Much of his work is for the affiliate, yes.

15 Q I think you testified that you gave some examples of some
16 of the work that he did. You said that occasionally the
17 partnership will get brought to small claims court by
18 residents; is that right? That he would sometimes appear for
19 the partnership in small claims court?

20 A Yes.

21 Q Is he allowed to appear as an attorney in small claims
22 court?

23 A Yes.

24 Q Is it because he has ownership interest?

25 A Yes.

1 Q I see. Then working, you also mentioned that there was
2 some unit where there was drug activity going on and that he
3 coordinated with the homeowners association in order to deal
4 with that issue; is that right?

5 A Yes.

6 Q Do you know whether the limited partners are challenging
7 any charges Mr. Arterberry made to the partnership in
8 connection with either of those two types of work?

9 A They are challenging all of his work.

10 Q Your understanding is they are challenging -- they are
11 challenging all of the work Mr. Arterberry has done?

12 A Well, they are challenging his entire fee.

13 Q Let's take a look at Exhibit A-71. This is an invoice, a
14 billing record, with a Paul -- is it Dienes, Deans, do you
15 know?

16 A Something like that.

17 Q This is work that he did, legal work that he did; is that
18 right?

19 A Correct.

20 Q He is charging the Parkway Apartments for this work?

21 A Yes.

22 Q Let's take a look at A-70. A-70 has that same name,
23 Paul Dienes. It references a case number, Paul Dienes vs
24 Trieste Holdings. Do you see that?

25 A Yes.

1 Q What was Paul -- what is Paul Dienes vs Trieste Holdings?

2 A Had to do with -- this person had complained to Labor &
3 Industries that he felt the job worksite at Parkway was
4 unsafe.

5 Q Who was he employed by?

6 A He was employed by Trieste Holdings.

7 Q Was the Parkway Apartments named as a defendant in that
8 action?

9 A I do not know.

10 Q Did you do anything to determine whether the partnership
11 had been named as a defendant in that action?

12 A I don't recall.

13 Q Do you believe that the partnership has an obligation to
14 indemnify Trieste Holdings in connection with this action?

15 A I believe that since this claim involved Parkway's
16 worksite that it would be appropriate for Parkway to pay for
17 this.

18 Q Do you know whether Parkway faces any potential of
19 liability in connection with this action?

20 A Well, it has all been settled. Nobody faces any
21 liability.

22 Q At the time before it settled, did you know whether the
23 Parkway Apartments faced any risk of liability in connection
24 with this action?

25 A I don't know.

1 Q Do you know whether Trieste Holdings ever made a demand
2 for indemnity from the Parkway Partnership?

3 A I don't know.

4 Q Did you ever do any type of investigation to determine
5 whether it was appropriate for the partnership to be paying
6 the legal fees of Trieste Holdings, its managing agent, in
7 connection with an action brought against Trieste?

8 A Can you repeat that?

9 Q Did you ever do any research to determine whether it was
10 appropriate for the Parkway Partnership to be paying legal
11 fees for an action that was brought against its managing
12 agent, Trieste Holdings?

13 A No.

14 Q You just paid the bill; is that right?

15 A I felt that it was appropriate for Parkway to cover this
16 expense since the work was being done for the benefit of
17 Parkway.

18 Q Did you ever inform the limited partner about this
19 lawsuit?

20 A I may not have.

21 Q Did you ever inform the limited partner that you had hired
22 Mr. Arterberry, your husband, to handle this lawsuit?

23 A I may not have.

24 Q Did you ever -- do you have any document or anything else
25 that you can point to that in your mind would suggest that

1 the partnership has an obligation to pay for legal fees
2 incurred by Trieste Holdings, LLC?

3 A What kind of document?

4 Q Any kind of document. Is there anything you can think of
5 that would give the Trieste Holdings, as a managing agent,
6 the ability to ask the partnership to cover its legal fees?

7 A No.

8 Q Is there anything in the partnership agreement that allows
9 you, as the general partner, to make a determination to pay
10 legal fees that are not incurred by the partnership?

11 A It doesn't say either way.

12 Q Let's talk about the repair supervision fee. The repair
13 supervision fee was paid by the partnership to Trieste; is
14 that right?

15 A Yes.

16 Q What was that fee paid for?

17 A That was paid for the services of overseeing the work
18 being done at Parkway.

19 Q So Trieste is the property manager at Parkway; is that
20 right?

21 A Yes.

22 Q In its capacity as the property manager, it has certain
23 obligations with respect to running the operation of the
24 Parkway Apartments; is that right?

25 A Yes.

1 Q And in addition to being the property manager, you are
2 saying that Trieste was also hired to perform contractor work
3 at the property; is that right?

4 A Yes.

5 Q So then it was paid -- who performed the actual work?
6 Were those Trieste employees?

7 A Yes.

8 Q So Trieste had its own employees. The property manager --
9 the managing agent had its own employees doing this work and
10 it charged the partnership for that labor; is that right?

11 A Charged the partnership -- the labor costs were passed
12 through to Parkway.

13 Q The labor costs were passed through to Parkway. Those --
14 those were paid through operating advances; is that right?

15 A They were paid from project cash flow.

16 Q You didn't loan the partnership the money to pay those
17 fees?

18 A A lot of those invoices have been deferred. A lot of them
19 are unpaid. They were put in as invoices. As there were
20 funds available, some of those invoices have been paid.

21 Q What does that mean, "they were deferred"?

22 A That means there is an invoice, it is an obligation on the
23 books that is unpaid.

24 Q Does it show up on the balance sheet for the partnership?

25 A It shows up -- yes.

1 Q How is it described on the balance sheet?

2 A Current liabilities, I believe, or could be in accounts
3 payable.

4 Q Where does that get paid in the waterfall?

5 A Those would -- depends on how much money is available.

6 Q What do you mean?

7 A I would have to look at our books, to be honest, to see
8 what went on month to month.

9 Q Trieste gets paid a managing agent fee. Trieste gets paid
10 for the labor to do these improvements. Then on top of that,
11 you charged a repair supervision fee that was 15 percent of
12 the cost of labor and materials to the Parkway Partnership;
13 isn't that right?

14 A Trieste Holdings did charge a repair supervision fee for
15 the labor that was -- and the supervisory work that was done.

16 Q That is 15 percent?

17 A Not always. It did charge a percentage.

18 Q Let's look at Exhibit A-263, at page 6. I would like to
19 direct your attention, Ms. Tamaro, to your response to
20 Interrogatory No. 9. You say, "Trieste Holdings, LLC, holds
21 a Washington State general contractor license and employs
22 four journey-level carpenters, three carpenter apprentices
23 and one carpenter's assistant. These carpenters have
24 upgraded Parkway substantially by replacing doors, windows,
25 roofs, balcony and sidings. Trieste Holdings charged Parkway

1 a reasonable fee of 15 percent of construction costs,
2 materials and labor for its general contractor overhead and
3 profit." Do you see that?

4 A I do.

5 Q So they get paid for managing the property, they get paid
6 for doing the labor, they get paid a 15 percent premium on
7 top of that. All of those go to the affiliate that you were
8 an owner of; is that right?

9 A They are all different jobs.

10 Q Did you bid out this project?

11 A I did not.

12 Q As -- you have no basis to conclude whether this is a
13 reasonable fee or not, do you?

14 A I would disagree with that.

15 Q You didn't test the market, though, did you?

16 A I went through an analysis with Gary Newbold when we
17 reroofed five buildings. I did actually go to two roofers
18 and ask them what their costs would be. We compared the
19 scope of the work, and the conclusion was that my employees
20 had provided the most work and that our fees were competitive
21 and reasonable.

22 We also pointed out to Gary that certain sales taxes were
23 not incurred when we did the work, which saved the property
24 money.

25 Q Trieste has a general contractor's license?

1 A Yes.

2 Q Presumably is there some contract that the Parkway
3 Management entered into with Trieste in connection with this
4 work that is being done?

5 A I did not sign a formal contract, no.

6 Q Why not?

7 A I just didn't.

8 Q Was it because you feel like you are the general partner
9 and you can just sort of do with it whatever it is that you
10 want? Is that why you didn't get a contract?

11 A No.

12 Q Now you testified at direct examination about something
13 called a REAC score. Do you recall that?

14 A Yes.

15 Q I believe REAC is an acronym; is that right?

16 A Yes.

17 Q Do you know what the acronym stands for?

18 A Real estate assessment center.

19 Q I had no idea.

20 The real estate assessment center is HUD's -- is a
21 HUD -- sorry, what is REAC? I know it is affiliated with
22 HUD. Can you describe again what it is?

23 A I might direct you to look it up. It is, yes, affiliated
24 with HUD.

25 Q The reason why I ask is you testified about it in your

1 direct examination. You seem to have a familiarity with it.
2 I know that you had testified, I believe, that HUD comes in
3 and inspects the property in connection with the issuance of
4 this REAC score; is that right?

5 A They do.

6 Q Depending on the score that you get, the frequency of
7 those inspections can be either once a year or as
8 infrequently as once every three years; is that right?

9 A Yes.

10 Q I think you also testified that back in the middle of the
11 last decade, the REAC score for Parkway was quite poor; is
12 that right? It was very low; is that correct?

13 A Yeah, I don't know if I would say quite poor. That seems
14 to be even lower. It was close to the bottom of the passing
15 range.

16 Q Close to the bottom of the passing range, which was
17 approximately?

18 A 60 out of 100.

19 Q 60 out of 100. Okay. Then you testified that because of
20 work that you had done, that you were able to increase the
21 REAC score above 80 in 2010; is that right?

22 A Yes.

23 Q That the REAC score has been at or above 80 since that
24 time; is that correct?

25 A Yes.

1 Q The REAC score from HUD went up -- and is 80 a comfortable
2 place to be in terms of a REAC score, from your perspective?

3 A Yes.

4 Q The property was in a comfortable place with its REAC
5 score in 2010 before any of the work that we are discussing
6 had been performed; is that right?

7 A We had done other work to prepare for the REAC, yes.

8 Q But the -- for example, all of the replacement of the
9 siding and all of the work that the contractors had been
10 doing on a rolling basis over the last two years where
11 Trieste is charging a 15 percent repair supervision fee, all
12 of that post dated the increase of the partnership's REAC
13 score to 80 or above; is that right?

14 A Yes.

15 Q Let's take a look at Exhibit 50. This is a document that
16 was shown to you by your counsel, Ms. Latsinova, in your
17 direct examination. This is a property condition report that
18 was prepared for HCP Pacific Asset Management in March of
19 2012. Do you see that?

20 A I do.

21 Q I think you testified that HCP Pacific Management is a
22 predecessor to Alden Torch; is that right?

23 A I don't know if I testified to it. That's my
24 understanding.

25 Q Okay. That's your understanding?

1 A Yes.

2 Q That's my understanding, too.

3 So this is a report that was commissioned by the
4 limited partner; is that right?

5 A That's my understanding.

6 Q That's your understanding. Let's go to page 8. Let's
7 go -- maybe we need to go to page 8 of the actual -- strike
8 page 8 of the --

9 THE COURT: Why don't we call it a night and pick it
10 up at 9:30 tomorrow. I do need to know what trajectory we
11 are on now. It is going slow. It is -- clearly Ms. Tamaro
12 is the most important fact-intensive witness. It is not with
13 criticism.

14 MR. PETTIT: I could finish up in about 15 minutes.
15 I can do it in the morning, too.

16 THE COURT: Okay. All right. Who are the next
17 witnesses coming in tomorrow?

18 MR. GOODNIGHT: We think that we could call
19 Laura Lindal out of order, if that is acceptable.

20 THE COURT: Sure.

21 MR. GOODNIGHT: Mr. Blake.

22 THE COURT: We are flexible, especially in a bench
23 trial.

24 MR. GOODNIGHT: Our redirect of Ms. Tamaro will be
25 quite short.

1 THE COURT: All right. Have a great evening. We will
2 see you tomorrow.

3 (The proceedings adjourned.)
4
5
6

7 C E R T I F I C A T E
8
9

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.
12
13
14

15 */s/ Angela Nicolavo*
16 *Debbie Zurn*

17 DEBBIE ZURN
18 ANGELA NICOLAVO
19 COURT REPORTERS
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